In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, PETITIONER,
v.
SING TUCK OR KING DO AND THIRTY-ONE others, respondents.
No. 591.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONER.

STATEMENT.

In October, 1903, R. M. Moore, an attorney claiming authority therefor, filed in the circuit court for the northern district of New York a petition in his own name for a writ of *habeas corpus* in behalf of Sing Tuck and thirty-one other Chinese persons detained by the United States Chinese inspector at Malone. The petition, which is very brief, alleges "that the relators are Chinese persons born in the United States and are citizens thereof," "that such detention is illegal and without any authority of law whatever;" that they have been denied admission to the United States by the Chinese inspector in charge, who had no authority to pass upon

the rights of "said Chinese persons to enter the United States, but has only authority to pass upon the claim upon (or) the right of aliens seeking to enter the United States;" and it prays that a writ of *habeas corpus* issue and relators be discharged. (R., 1.) All statements of the petition were made as "upon information and belief" by Moore, and his affidavit thereto only shows that "he believes" the same to be true, without anything to indicate the ground of such belief or the source of his knowledge. Copies of orders made by the officer denying admission to respondents were attached to and made part of petition. They were substantially the same in all cases, except as to names, and as follows:

(R. 2.) OFFICE OF CHINESE INSPECTOR,
Brooklyn, N. Y., October 13, 1903.

In re Sang Chong, No. 255, Ex. S. S. Empress of India, September 23, 1903.

The above-named applicant, Sang Chong, whose photograph is attached to the accompanying examination, presented himself in person at the Malone detention house, September 23, 1903. At that time he was requested by Chinese Inspector Thomas D'Arcy to make a voluntary statement relative to his right to be admitted to the United States, or to furnish the names of any witnesses by whom he would be able to prove such right, but refused to do either, and upon being further questioned—in order that we might secure data to institute an investigation—refused to answer all questions

excepting as to his name and the fact that he sought admission to the United States.

In view of the fact that this applicant is a person of the Chinese race, speaking the Chinese language, and having just arrived from China, having been given an opportunity to establish his right to enter and having refused to avail himself of such right, and as the burden of proof is upon him to establish his right to enter the United States and having failed to do so, he is denied admission.

F. W. BERKSHIRE,
Officer in Charge.

The writ of *habeas corpus* was granted as prayed by Hon. George W. Ray, district judge, and return was made November 10, 1903, as to each person named therein. The returns show (R., 4–6)—

That respondent, D'Arcy, is a sworn Chinese inspector acting under direction and authority of the Secretary of Commerce and Labor, stationed at Malone, New York, near the border line between the United States and Canada, and in charge of the detention quarters in which all Chinese persons making application to enter the United States are detained pending inquiry by inspection officers.

That before the writ issued the parties named therein—being Chinese persons and having immediately come from China by way of Vancouver, over the Canadian Pacific Railroad—made application to enter the United States at the Canadian line. For convenience, pending inquiry into the rights of each, they were confined in the detention house at Malone, a port of

entry for Chinese immigrants designated by the Secretary of the Treasury under act of Congress.

That upon examination by officers designated by law respondents were denied admission and were being held awaiting opportunity to return them to China.

That such persons, having presented themselves at Malone and having made application to enter the United States, were given opportunity by the immigration officer to make such voluntary statements as they might desire relative to their rights to be admitted, were informed that they might produce any witnesses by whom such rights could be supported, and full opportunity was given to produce any evidence they had or could procure touching the right of entry, but they refused to answer any questions touching such right or to furnish names of any witnesses by whom the same could be established, or to produce any papers or proof, oral or written, relating thereto. With the returns are certified copies of the proceedings at the examinations.

That all evidence produced by respondents was duly considered by the inspection officer in charge, and he, being of the opinion that they were Chinese persons not entitled to enter or remain in the United States, so adjudged and denied them admission.

In the return are set out certain rules and regulations promulgated by the Department of Commerce and Labor governing admission of Chinese into the United States. (R. 5, 6.)

The respondent, upon information and belief, denies that relators are citizens of the United

States, and alleges they are alien Chinese laborers not entitled to enter therein, and that their detention is proper. (R. 6.)

That immediately upon the decision of the Chinese inspector denying the right of entry, respondents were duly informed thereof and of their right to take an appeal to the Secretary of Commerce and Labor. (R., 59.)

The records of respondents' examinations before immigration officers show that five, namely, Non Chock, Jane Lop, Sing Hoy, Gong Sing, and Dew Ark stated they were born in the United States. At that time twenty-seven set up no claim of citizenship, and refused to answer substantially every question propounded to them. The five first mentioned failed to support their claims by any credible evidence, and no prudent inspector would have been justified in believing them. (R., 13–43–50–56–32.)

After having been once examined all the applicants were recalled and asked as to their identity and whether they had been examined on a prior day, shown photographs of themselves, and asked if the same were correct, to both of which questions they replied in the affirmative. The examinations are fully set out in the record. None of respondents asked for an appeal to the Secretary of Commerce and Labor.

When the return was made the United States district attorney intervened on behalf of respondent below and the United States and moved to dismiss the writ on the following grounds (R., 59):

First. This court has no jurisdiction to review the determination of the immigration officers

of the United States in denying to the petitioners herein the right to enter the United States.

Second. That the determination of the immigration officers on the question of the right of the petitioners to enter the United States is final and conclusive, no appeal having been taken therefrom to the Secretary of Commerce and Labor.

Third. That it is not established by the petition and return that the petitioners, or any of them, have lawful right to enter the United States.

Fourth. That the facts set forth in the petition and return show that the petitioners have no legal right to enter the United States.

Fifth. That the petitioners are not unlawfully detained or deprived of their liberty.

The circuit court was of opinion that the motion to dismiss should be granted, and a decree was accordingly entered adjudging the detention of respondents lawful, and ordering that the petition be denied, the writ of habeas corpus dismissed, and all of said Chinamen remanded to the custody of the inspector, to be dealt with according to law. (R., 75.)

From the action of the circuit court an appeal was prayed and granted to the United States circuit court of appeals for the second circuit. That court, on the 25th of January, 1904, heard the cause and thereafter reversed such action and directed that the cause be remanded "for inquiry into the status of the individual relators." (R., 81.)

A writ of *certiorari* was granted to the circuit court of appeals, the cause brought to this court, and thereafter advanced for hearing.

Printed copies of the laws, treaties, and regulations relating to exclusion of Chinese, compiled by the Department of Commerce and Labor, are filed herewith.

The act of Congress, February 14, 1903 (32 Stat., 825), created the Department of Commerce and Labor, intrusted to it enforcement of the Chinese-exclusion acts, and transferred to its Secretary the duties and powers relating thereto formerly given to the Secretary of the Treasury.

Act of August 18, 1894 (28 Stat., 390):

> An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes.
>
> *Be it enacted, etc.,*
>
> * * * * *
>
> In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.
>
> * * * * *

The contention in behalf of respondents may be summarized under the points specified in brief filed for them in the circuit court of appeals as follows:

Point 1. A person of Chinese descent born within the United States is a citizen thereof.

Point 2. Citizenship is a right. Every person claiming it has the constitutional right to have it determined judicially in a constitutional court.

Point 3. If the contention of the Government is sustained, then the constitutional right to a writ of *habeas corpus* is denied.

Point 4. The pretended trial and adjudication by the immigrant inspector in these cases was not due process of law.

Point 5. There was no evidence before the inspector upon which he could base a judicial determination.

Point 6. A Chinese inspector is in no sense a judicial officer.

SPECIFICATION OF ERRORS.

The circuit court of appeals erred in reversing the order of the circuit court which dismissed the writ of *habeas corpus*, and remanding the cause for inquiry into the status of the individual relators.

ARGUMENT.

Did the circuit court of appeals have jurisdiction of the appeal from the circuit court?

It appears from the record that the present controversy "is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Con-

stitution, or some law or treaty of the United States." Was not the appellate jurisdiction of this court in respect of the same, therefore, exclusive, and the appeal to the circuit court of appeals improper?

American Sugar Refining Company v. *New Orleans* (181 U. S., 277, 281).

> The right to two appeals would exist in every case (the litigated matter having the requisite value) where the jurisdiction of the circuit court rested solely on the ground that the suit arose under the Constitution, laws or treaties of the United States, if such cases could be carried to the circuit court of appeals, for their decisions would not come within the category of those made final.
>
> As, however, a case so arises where it appears on the record, from plaintiff's own statement, in legal and logical form, such as is required by good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Constitution, or some law or treaty of the United States * * *; and as those cases fall strictly within the terms of section 5, the appellate jurisdiction of this court in respect of them is exclusive.

Union and Planters' Bank v. *Memphis* (189 U. S., 71, 73).

> Diversity of citizenship did not exist, and the jurisdiction of the circuit court rested solely on the ground that the cause of action arose under the Constitution of the United States. The

appeal lay directly to this court under section 5 of the judiciary act of March 3, 1891, and not to the circuit court of appeals. * * * Nevertheless an appeal having been prosecuted to the latter court and having there gone to decree, an appeal was allowed to this court because the judgment was not made final in that court by section 6 of the act. But the case being here, and the jurisdiction of the circuit court having depended on the sole ground that it arose under the Constitution, we are constrained to reverse the decree of the circuit court of appeals, not on the merits, but by reason of the want of jurisdiction in that court. If this were not so, the right to two appeals would exist in every similar case notwithstanding, as we have repeatedly held, that such was not the intention of the act.

The original petition did not show probable cause justifying the issuance of the writ. And upon the undenied facts set forth in the return it was the manifest duty of the immigration officers to detain respondents.

The Revised Statutes provide:

(Sec. 754.) Application for writ of *habeas corpus* shall be made to the court, * * * by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained. * * * The facts set forth in the complaint shall be verified by the oath of the person making the application.

(Sec. 760.) The petitioner or the party imprisoned or restrained may deny any of the facts set forth in the return, or may allege any

other facts that may be material in the case. Said denials or allegations shall be under oath. * * *

(Sec. 761.) The court, or justice, or judge shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.

The direct course of all the later decisions, both English and American, is to establish the rule that probable cause must first be shown to obtain the writ of *habeas corpus*, whether it be granted at common law or under the statute.

Church on Habeas Corpus, sec. 92.
Ex parte Watkins, 3 Peters, 193.
Ex parte Milligan, 4 Wall., 2, 110.
Ex parte Royall, 117 U. S., 250.
Ex parte Terry, 128 U. S., 301.

At common law no evidence was necessary to support the return (to a writ of *habeas corpus*). It was deemed to import verity until impeached.

Hurd on Habeas Corpus, Book 2, c. 3, secs. 8, 9, 10.

Church on Habeas Corpus, secs. 122, 160, 170.

And this rule is not changed by any statute of the United States.

Crowley v. *Christensen*, 137 U. S., 86, 94.
Holden v. *Minnesota*, 137 U. S., 483, 491.

Church on Habeas Corpus—

(Sec. 160.) The return to a writ of *habeas corpus* imports verity until it is impeached; and

> when made under oath by a private individual, or not under oath by a public officer, in his official capacity, the facts therein stated will be taken as true, without reference to the allegations in the petition, unless an issue as to these facts is raised by an appropriate pleading on the part of the petitioner. This pleading is usually in the form of an answer denying the allegations of the return. The return should be responsive to the writ, and not to the petition upon which it is based. And where the return sets out in full the record of the proceedings under which the petitioner is held, it is a full and complete answer to every allegation contained in the petitioner's application for his discharge, and being admitted as true, negatives the same.
>
> (Sec. 162.) * * * But instead of waiting until the return is made, and then making answer to it, if petitioner anticipates the return and sets forth a response to it in his petition, an objection on this account will not prevail in the appellate court * * * if the allegations of the petition are full and explicit to the point, and are also made under oath.

The purpose of the Chinese exclusion acts and regulations adopted for making them effective is to *prevent* the landing of Chinese persons in the United States, unless it affirmatively appears that they are exempt from the general provisions because officials, teachers, students, merchants, travelers, or citizens of the United States. Inspection officers are charged with enforcing such laws and regulations, and it is their duty to

exclude every Chinaman who does not show himself entitled under the law to enter. If officers should permit entry of any one of that race without demanding satisfactory proof of facts, they would grossly violate their duty. An examination of the laws will make this manifest; and as to all Chinese except such as claim birth in the United States, I do not understand respondents deny this theory of the law.

In order that the immigration laws may be carried out it seems absolutely necessary that inspection officers shall have the right, in the first instance, to pass upon the claims of all persons who present themselves on the border seeking admission into the United States, and that such applicants shall be required to present to them the facts in support of their claims. The immigration officer is the tribunal designated by Congress to try questions relating to admission, and before the courts can undertake to inquire into his action it is necessary, at the very least, to show that upon the case as made before him his action was erroneous.

From the original petition it appears that respondents were Chinese persons, speaking the Chinese language, who had just arrived from China, and who, having presented themselves in person to the inspector, were given full opportunity to establish a right to enter the United States, but refused to give any substantial information in reference thereto.

The petition alleges that respondents were born within the United States and are therefore entitled to enter, but it in no way suggests that any proof on that subject was offered to the inspector or a prima facie

case made out before him. The right of entry is based upon the single claim of American citizenship, asserted so far as it shows for the first time in the petition presented to the court, and wholly without reference to anything said or done before the inspector.

Upon such a petition the writ should not have been granted in the first instance.

The return shows that of the 32 Chinamen examined, 27 made then no claim of birth in the United States and no show of right to enter therein. Five said they were born in the United States, but refused to give information to support such claim, and by their action made it incredible.

The original petition asserted citizenship upon information and belief. The return denied, upon information and belief, that respondents were citizens, and stated that they were alien Chinese laborers not entitled to entry. No denial was made of any facts set out in the return nor was application made to reply thereto in any way. Such facts must, therefore, be taken as true and the action of the court in dismissing the writ can not be held to be error. The very ground upon which the petition was based was denied and there was nothing to put the denial in issue.

In any view of the facts brought by the return before the court it was the clear duty of the immigration officers to detain all of the respondents, and as it was their duty so to do, such detention could not be illegal. It follows, wholly irrespective of the question

as to the finality of findings by immigration officers under the act of 1894, that the writ in the present case was properly dismissed, no illegal detention having been shown.

Ex parte Watkins (3 Peters, 201)—

> The purpose of a writ of *habeas corpus* is to inquire into the *legality* of the confinement, and unless the court finds such confinement contrary to law the writ should be dismissed.

Wales v. *Whitney* (114 U. S., 571)—

> The writ of *habeas corpus* is not a writ of error, though in some cases in which the court issuing it *has* appellate power over the court by whose order the petitioner is held in custody it may be used with the writ of *certiorari* for that purpose. In such case, however, as the one before us it is not a writ of error. Its purpose is to enable the court to inquire, first, if the petitioner is restrained of his liberty. If he is not, the court can do nothing but discharge the writ. If there is such restraint, the court can then inquire into the cause of it, and if the alleged cause be unlawful, it must then discharge the prisoner.

Ex parte Curtis (106 U. S., 375)—

> Our inquiries in this class of cases are limited to such objections as relate to the authority of the court to render the judgment by which the prisoner is held. We have no general power to review the judgments of the inferior courts of the United States in criminal cases, by the use of the writ of *habeas corpus* or otherwise.

> Our jurisdiction is limited to the single question of the power of the court to commit the prisoner for the act of which he has been convicted. (*Ex parte Lange*, 18 Wall., 163; *Ex parte Rowland*, 104 U. S., 604.)

Nishimura Ekiu v. *United States* (142 U. S., 651, 662)—

> A writ of *habeas corpus* is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the Government is shown, he is not to be discharged for defects in the original arrest or commitment.

Carter v. *McClaughry* (183 U. S., 381).

The original petition alleged the detention of respondents to be "illegal and without any authority of law whatever" because they were born in the United States and citizens thereof, and the inspection officers had no authority to pass upon the rights of such persons to enter the United States, their authority being limited to pass upon claims of aliens seeking to enter.

In order to discharge respondents it would be necessary to hold that the immigration officer acted contrary to law in detaining them and should have admitted them to entry. As they had *voluntarily* applied for permission to come into the United States, the officer was compelled either to grant or refuse such permission. It would have been plainly a gross breach of his duty

to have admitted them upon the facts presented. Their detention was in conformity to and not in violation of law.

If the mere unsupported statement of a Chinaman that he was born in the United States entitles him to enter the exclusion acts will prove farcical. It may be, in an extraordinary case, that one who has in good faith made a fair effort to prove citizenship before an immigration officer and has shown facts upon which admission should be granted him may have a writ of *habeas corpus* to correct the wrong done him by the officer, but he must certainly first show that he has suffered wrong. The immigration officer is not a mere figure to be treated without consideration or "ignored."

If the petition and return in the present case had shown that upon the facts presented to the inspector respondents should have, as a matter of law, been admitted, as in *Gonzales* v. *Williams* (192 U. S., 1), then

Where the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, as to questions of fact is conclusive upon all others. Pg. 17

This doctrine has been frequently applied to the action of administrative officers in the Land Department. (*Johnson* v. *Towsley*, 13 Wall., 83; *Smelting Company* v. *Kemp*, 104 U. S., 636.)

The courts have power to grant relief when the special tribunal acts contrary to law, or possibly where a manifest wrong has been done, and only in such cases. (*Burfenning* v. *Chicago, St. Paul, etc., Railroad*, 163 U. S., 321, 323; *School of Magnetic Healing* v.

When Chinese persons present themselves for admission into the United States it is the duty of immigration officers to pass upon their claims. If citizenship is alleged, that, like other questions of fact, must be determined by such officers. Except, possibly, in extraordinary cases an adverse decision by the immigration officer is final, subject to an appeal to the Secretary of Commerce and Labor, and it can not be reviewed upon writ of habeas corpus.

None of the respondents took or asked an appeal to the Secretary of Commerce and Labor.

If the *mere* statement by one possessing all the marks of a Chinaman and who has just arrived from China, that he was born in the United States ousts the immigration officer of all authority to inquire into the truth of his claim, then the purposes of the laws will be constantly defeated and the courts may expect to try thousands of cases where such pretensions are fraudulently set up.

When Congress passed the act of August 18, 1894, making a decision of the appropriate immigration officer adverse to the applicant final, it evidently intended to correct the evils growing out of writs of *habeas corpus* fraudulently sued out, to provide a speedy way of deciding questions concerning the right to admission and to prevent the very difficulties now confronting the Government officers.

Especial attention is called to the opinion of Judge Ray in support of the decree entered in the circuit court, upholding the contention above announced. (R. 60.)

Reference is also made to the opinion of Judge Wheeler in *In re Moy Quong Shing* (125 Fed., 641), sustaining the views here suggested, and to the opinion of Judge De Haven *In re Chin Bak Bong*, printed with petition for *certiorari*, holding to the contrary.

The circuit court of appeals relied in its opinion upon the authority of *Gee Fook Sing* v. *United States* (49 Fed. Rep., 146). That case was decided in January, 1892, *without argument*, and, so far as appears, the question now raised was not distinctly before the court. The case does not seem to have been regarded by counsel who appeared for respondents in the circuit court of appeals as of sufficient importance to justify its citation in their brief filed there.

The contention of respondents is that while, generally speaking, immigration officers have jurisdiction under the statutes to exclude a Chinaman not entitled to enter the United States because born therein, yet, if the Chinaman asserts his right to enter because of birth, the officer has no jurisdiction whatsoever to pass upon the question so raised or to demand that any proof upon the same be submitted. Indeed, as to 27 of the 32 respondents, it is claimed it was unnecessary for them to advise the immigration officer of their claim of citizenship, but that they could wholly ignore such officer.

In *Lem Moon Sing* v. *United States* (158 U. S., 547) this court overruled a similar contention, and Justice Harlan, who delivered the opinion, said in reference thereto (p. 547):

> That view, if sustained, would bring into the courts every case of an alien who claimed the right to come into the United States under some law or treaty, but was prevented from doing so by the executive branch of the Government. This would defeat the manifest purpose of Congress in committing to subordinate immigration officers and to the Secretary of the Treasury exclusive authority to determine whether a particular alien seeking admission into this country belongs to the *class* entitled by some law or treaty to come into the country, or to a *class* forbidden to enter the United States. Under that interpretation of the act of 1894 the provision that the decision of the appropriate immigration or customs officers should be *final*, unless reversed on appeal to the Secretary of the Treasury, would be of no practical value.

It would seem highly absurd to impose upon immigration officers the duty of excluding Chinamen not entitled to enter and at the same time take away from them all authority to pass upon facts. Such a construction of the law would result in ousting the officers of jurisdiction in substantially every case, as there is ample reason for supposing that few Chinamen applying for admission would not find it convenient to claim birth within the United States.

Chin Bak Kan v. *United States* (186 U. S., 193, 200) was a proceeding begun before a commissioner to deport a Chinaman already in the United States, and in reply to a contention made in behalf of the defendant, Chief Justice Fuller, delivering the opinion of the court, said:

> But it is argued that the commissioner had no jurisdiction to act because the claim of citizenship was made. The ruling in *United States* v. *Wong Kim Ark* (169 U. S., 649) was to this effect: "A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States." It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.

If a commissioner, under such circumstances, had jurisdiction to pass on the question of citizenship, how much clearer is the right of the immigration officer, in view of the act of 1894 making his action final, in a case where the Chinaman voluntarily applies to him for permission to enter the country?

What is the immigration officer to do in such case if he has no right to decide the question presented?

In the *Japanese Immigrant case* (189 U. S., 97) Justice Harlan, delivering the opinion of the court, said:

> That Congress may exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain classes of aliens may come to this country; establish regulations for sending out of the country such aliens as come here in violation of law; and commit the enforcement of such provisions, conditions, and regulations exclusively to executive officers, without judicial intervention, are principles firmly established by the decisions of this court.

Does the mere unsupported statement by a Chinaman that he was born in the United States oust the immigration officer of jurisdiction to inquire into his claim, make it unlawful for such officer to detain him, and necessitate an investigation by the courts? The Government thinks that to answer in the affirmative would emasculate the law, and that no such conclusion is permissible.

The question involved in this suit is highly important to the Government, not only in reference to the exclusion of Chinese, but also as respects the orderly administration of the immigration act of 1903, the terms of which exclude absolutely certain aliens. If the bare assertion of citizenship by a Chinaman deprives the immigration officer of all right to investigate that question, and makes it necessary for the

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court in every case to pass upon the facts in an original proceeding, then it would seem to be necessary for the court in like manner to pass upon the facts in the case of every one of the hundreds of thousands of immigrants who annually come to the United States who should see fit to say he was born therein. Manifestly, such a ruling would render it impossible for the executive officers to carry into effect the purpose of Congress. It would, indeed, seem to follow necessarily that if the immigration officers have no right to pass upon the question of citizenship they have no right to detain any persons who claim such citizenship, and must admit them without further inquiry. If this be the law it will be practically impossible to enforce any exclusion act.

THE GOVERNMENT RESPECTFULLY ASKS THAT THE ACTION OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT BE REVERSED AND THE DECREE OF THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF NEW YORK, DISMISSING THE WRIT OF HABEAS CORPUS, BE IN ALL THINGS AFFIRMED.

J. C. MCREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *April, 1904.*

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DEPARTMENT OF COMMERCE AND LABOR

LAWS, TREATY, AND REGULATIONS

RELATING TO

591

THE EXCLUSION OF CHINESE

DECEMBER, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1903

34005

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other cause of disability beyond his control, such Chinese laborer shall be rendered unable sooner to return—which facts shall be fully reported to the Chinese consul at the port of departure, and by him certified, to the satisfaction of the collector of the port at which such Chinese subject shall land in the United States. And no such Chinese laborer shall be permitted to enter the United States by land or sea without producing to the proper officer of the customs the return certificate herein required.

—certificate.

Article III.

Privileged classes.

The provisions of this Convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travellers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their Government or the Government where they last resided viséed by the diplomatic or consular representative of the United States in the country or port whence they depart.

Certificates.

Transit of laborers across country.

It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States in the course of their journey to or from other countries subject to such regulations by the Government of the United States as may be necessary to prevent said privilege of transit from being abused.

Article IV.

Protection of Chinese.

In pursuance of Article III of the Immigration Treaty between the United States and China, signed at Peking on the 17th day of November, 1880 (the 15th day of the tenth month of Kwanghsii, sixth year), it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens. And the Government of the United States reaffirms its obligation, as stated in said Article III, to exert all its power to secure protection to the persons and property of all Chinese subjects in the United States.

ARTICLE V.

Registration of resident laborers.

The Government of the United States, having by an Act of the Congress, approved May 5, 1892, as amended by an Act approved November 3, 1893, required all Chinese laborers lawfully within the limits of the United States before the passage of the first-named Act to be registered as in said Acts provided, with a view of affording them better protection, the Chinese Government will not object to the enforcement of such acts, and reciprocally the Government of the United States recognizes the right of the Government of China to enact and enforce similar laws or regulations for the registration, free of charge, of all laborers, skilled or unskilled (not merchants as defined by said Acts of Congress), citizens of the United States in China, whether residing within or without the treaty ports.

Reports to be furnished Chinese Government.

And the Government of the United States agrees that within twelve months from the date of the exchange of the ratifications of this Convention, and annually, thereafter, it will furnish to the Government of China registers or reports showing the full name, age, occupation, and number or place of residence of all other citizens of the United States, including missionaries, residing both within and without the treaty ports of China, not including, however, diplomatic and other officers of the United States residing or traveling in China upon official business, together with their body and household servants.

ARTICLE VI.

Duration of period of exclusion.

This Convention shall remain in force for a period of ten years beginning with the date of the exchange of ratifications, and if six months before the expiration of the said period of ten years neither Government shall have formally given notice of its final termination to the other, it shall remain in full force for another like period of ten years.

In faith whereof, we, the respective plenipotentiaries, have signed this Convention and have hereunto affixed our seals.

Done, in duplicate, at Washington, the 17th day of March, A. D. 1894.

WALTER Q. GRESHAM [SEAL.]
(Chinese Signature) [SEAL.]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the city of Washington on the 7th day of December, one thousand eight hundred and ninety-four:

Now, therefore, be it known that I, GROVER CLEVELAND, President of the United States of America, have caused the said Convention to be made public, to the end that the same, and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 8th day of December, in the year of our Lord, one thousand [SEAL.] eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

GROVER CLEVELAND.

By the President:

W. Q. GRESHAM,

Secretary of State.

ACT OF MAY 6, 1882.[a]

(22 Stat., p. 58.)

AN ACT to execute certain treaty stipulations relating to Chinese.

Whereas, in the opinion of the Government of the United States, the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore,

Amended by act of July 5, 1884.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or, having so come after the expiration of said ninety days, to remain within the United States.

Laborers excluded for period of ten years.

[a] Sections 2158–2163 of the Revised Statutes and the act of March 3, 1875 (1 Supp. R. S., 86, ch. 141), prohibit the importation of "cooleys" and women for immoral purposes.

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SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land or permit to be landed, any Chinese laborer, from any foreign port or place, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may be also imprisoned for a term not exceeding one year. Amended by act of July 5, 1884. Penalties.

SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; nor shall the two foregoing sections apply to the case of any master whose vessel, being bound to a port not within the United States, shall come within the jurisdiction of the United States by reason of being in distress or in stress of weather, or touching at any port of the United States on its voyage to any foreign port or place: *Provided*, That all Chinese laborers brought on such vessels shall depart with the vessel on leaving port. Exceptions. Amended by act of July 5, 1884. —resident laborers. —vessels in distress. Identification.

[a]SEC. 4. That for the purpose of properly identifying Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and in order to furnish them with the proper evidence of their right to go from and come to the United States of their free will and accord, as provided by the treaty between the United States and China dated November seventeenth, eighteen hundred and eighty, the collector of customs of the district from which any such Chinese laborer shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such Chinese laborer and cleared or about to sail from his district for a foreign port, and on such vessel make a list of all such Chinese laborers, which shall be entered in registry-books Amended by act of July 5, 1884. Collector to make list of laborers departing.

[a]See act approved October 1, 1888, which prohibits the issuance of certificates of identity of Chinese laborers and declares void such certificates issued.

to be kept for that purpose, in which shall be stated the name, age, occupation, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the custom-house; and every such Chinese laborer so departing from the United States shall be entitled to, and shall receive, free of any charge or cost upon application therefor, from the collector or his deputy, at the time such list is taken, a certificate, signed by the collector or his deputy and attested by his seal of office, in such form as the Secretary of the Treasury shall prescribe, which certificate shall contain a statement of the name, age, occupation, last place of residence, personal description and facts of identification of the Chinese laborer to whom this certificate is issued, corresponding with the said list and registry in all particulars. In case any Chinese laborer after having received such certificate shall leave such vessel before her departure he shall deliver his certificate to the master of the vessel, and if such Chinese laborer shall fail to return to such vessel before her departure from port the certificate shall be delivered by the master to the collector of customs for cancellation.

Certificate to be given laborer.

Amended by act of Oct. 1, 1888.

Certificate filed and canceled, when.

The certificate herein provided for shall entitle the Chinese laborer to whom the same is issued to return to and re-enter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer shall seek to re-enter; and upon delivery of such certificate by such Chinese laborer to the collector of customs at the time of re-entry in the United States, said collector shall cause the same to be filed in the custom-house and duly canceled.

Departure by land.

Amended by act of Oct. 1, 1888.

—certificate.

SEC. 5. That any Chinese laborer mentioned in section four of this act being in the United States, and desiring to depart from the United States by land, shall have the right to demand and receive, free of charge or cost, a certificate of identification similar to that provided for in section four of this act to be issued to such Chinese laborers as may desire to leave the United States by water; and it is hereby made the duty of the collector of customs of the district next adjoining the foreign country to which said Chinese laborer desires to go to issue such certificate, free of charge or cost, upon application by such Chinese laborer, and to enter the same upon registry-books to be kept by him for the purpose, as provided for in section four of this act.

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Privileged class to be identified by certificate from Chinese Government.

Amended by act of July 5, 1884.

SEC. 6. That in order to the faithful execution of articles one and two of the treaty in this act before mentioned, every Chinese person other than a laborer who may be entitled by said treaty and this act to come within the United States, and who shall be about to come to the United States, shall be identified as so entitled by the Chinese Government in each case, such identity to be evidenced by a certificate issued under the authority of said Government, which certificate shall be in the English language or (if not in the English language) accompanied by a translation into English, stating such right to come, and which certificate shall state the name, title, or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, and place of residence in China of the person to whom the certificate is issued and that such person is entitled conformably to the treaty in this act mentioned to come within the United States.

Such certificate to be prima facie evidence.

Such certificate shall be prima facie evidence of the fact set forth therein, and shall be produced to the collector of customs, or his deputy, of the port in the district in the United States at which the person named therein shall arrive.

Penalties.

SEC. 7. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate, or forge any such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and imprisoned in a penitentiary for a term of not more than five years.

Master of vessel to deliver list of Chinese passengers to collector.

Amended by act of July 5, 1884.

SEC. 8. That the master of any vessel arriving in the United States from any foreign port or place shall, at the same time he delivers a manifest of the cargo, and if there be no cargo, then at the time of making a report of the entry of the vessel pursuant to law, in addition to the other matter required to be reported, and before landing, or permitting to land, any Chinese passengers, deliver and report to the collector of customs of the district in which such vessel shall have arrived a separate list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time.

Such lists shall show the names of such passengers (and if accredited officers of the Chinese Government traveling

on the business of that Government, or their servants, with a note of such facts), and the names and other particulars, as shown by their respective certificates; and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo.

Any willful refusal or neglect of any such master to comply with the provisions of this section shall incur the same penalties and forfeiture as are provided for a refusal or neglect to report and deliver a manifest of the cargo.

Collector to examine and compare certificates and lists.

SEC. 9. That before any Chinese passengers are landed from any such vessel, the collector or his deputy shall proceed to examine such passengers, comparing the certificates with the list and with the passengers, and no passenger shall be allowed to land in the United States from such vessel in violation of law.

Forfeiture of vessel. Amended by act of July 5, 1884.

SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found.

Misdemeanor.—penalty. Amended by act of July 5, 1884.

SEC. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall knowingly aid or abet the same, or aid or abet the landing in the United States from any vessel of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year.

Certificate sole evidence of right to enter. Amended by act of July 5, 1884.

SEC. 12. That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel.

Deportation.

And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, by direction of the President of the United States, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or remain in the United States.

Diplomatic officers. Amended by act of July 5, 1884.

SEC. 13. That this act shall not apply to diplomatic and other officers of the Chinese Government traveling upon the business of that Government, whose credentials shall

be taken as equivalent to the certificate in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese persons.

State laws.

SEC. 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

Meaning of words "Chinese laborers." Amended by act of July 5, 1884.

SEC. 15. That the words "Chinese laborers," wherever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining.

Approved, May 6, 1882.

ACT OF JULY 5, 1884.

(23 Stat., p. 115.)

AN ACT to amend an act entitled "An act to execute certain treaty stipulations relating to Chinese, approved May sixth, eighteen hundred and eighty-two."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled "An act to execute certain treaty stipulations relating to Chinese," approved May sixth, eighteen hundred and eighty-two, is hereby amended so as to read as follows:

Preamble.

"Whereas in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof; Therefore

Period of exclusion.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby suspended, and during such suspension it shall not be lawful for any Chinese laborer to come from any foreign port or place, or having so come to remain within the United States."

Section two of said act is hereby amended so as to read as follows:

Liability of master of vessel.

"SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land, or attempt to land, or permit to be landed any Chinese laborer, from any foreign port or place, shall be

deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may also be imprisoned for a term not exceeding one year."

Section three of said act is hereby amended so as to read as follows:

Exceptions—resident laborers.

"SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of the act to which this act is amendatory, nor shall said sections apply to Chinese laborers, who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; nor shall the two foregoing sections apply to the case of any master whose vessel, being bound to a port not within the United States, shall come within the jurisdiction of the United States by reason of being in distress or in stress of weather, or touching at any port of the United States on its voyage to any foreign port or place: *Provided*, That all Chinese laborers brought on such vessels shall not be permitted to land except in case of absolute necessity, and must depart with the vessel on leaving port."

Vessel in distress.

Section four of said act is hereby amended so as to read as follows:

Repealed by act of Oct. 1, 1888.

SEC. 4. That for the purpose of properly identifying Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of the act to which this act is amendatory, and in order to furnish them with the proper evidence of their right to go from and come to the United States as provided by the said act and treaty between the United States and China dated November seventeenth, eighteen hundred and eighty, the collector of customs of the district from which any such Chinese laborers shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such Chinese laborer, and cleared or about to sail from his district for a foreign port, and on such vessel

make a list of all such Chinese laborers, which shall be entered in registry books, to be kept for that purpose in which shall be stated the individual, family, and tribal name in full, the age, occupation, when and where followed, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each such Chinese laborer, which books shall be safely kept in the custom-house; and every such Chinese laborer so departing from the United States shall be entitled to and shall receive, free of any charge or cost upon application therefor, from the collector or his deputy, in the name of said collector and attested by said collector's seal of office, at the time such list is taken, a certificate, signed by the collector or his deputy and attested by his seal of office, in such form as the Secretary of the Treasury shall prescribe, which certificate shall contain a statement of the individual, family, and tribal name in full, age, occupation, when and where followed, of the Chinese laborer to whom the certificate is issued, corresponding with the said list and registry in all particulars.

Collector to make list of departing laborers.

Certificate to be given laborer.

In case any Chinese laborer, after having received such certificate, shall leave such vessel before her departure, he shall deliver his certificate to the master of the vessel; and if such Chinese laborer shall fail to return to such vessel before her departure from port, the certificate shall be delivered by the master to the collector of customs for cancellation.

The certificate herein provided for shall entitle the Chinese laborer to whom the same is issued to return to and reenter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer shall seek to reenter, and said certificate shall be the only evidence permissible to establish his right of reentry; and upon delivering of such certificate by such Chinese laborer to the collector of customs at the time of reentry in the United States, said collector shall cause the same to be filed in the custom-house and duly canceled.

Certificate to be sole evidence of right to enter.

Section six of said act is hereby amended so as to read as follows:

"SEC. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of

Persons other than laborers.

Permission and identification by Chinese Government.

and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States.

Amended by Art. III of treaty of Dec. 8, 1894.

Certificate.

Merchants.

If the person so applying for a certificate shall be a merchant said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid: *Provided*, That nothing in this act nor in said treaty shall be construed as embracing within the meaning of the word 'merchant,' hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

Travelers.

If the certificate be sought for the purpose of travel for curiosity, it shall also state whether the applicant intends to pass through or travel within the United States, together with his financial standing in the country from which such certificate is desired.

Consular visé.

The certificate provided for in this act, and the identity of the person named therein, shall, before such person goes on board any vessel to proceed to the United States, be viséed by the indorsement of the diplomatic representatives of the United States in the foreign country from which such certificate issues, or of the consular representative of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative whose indorsement is so required is hereby empowered, and it shall be his duty, before indorsing such certificate as aforesaid, to examine into the truth of the statements set forth in said certificate, and if he shall find upon examination that said or any of the statements contained therein are untrue it shall be his duty to refuse to indorse the same.

Such certificate viséed as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district in the United States at which the person named therein shall arrive, and afterward produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the persons so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities."

Certificate prima facie evidence against United States and sole evidence for holder.

Section eight of said act is hereby amended so as to read as follows:

"SEC. 8. That the master of any vessel arriving in the United States from any foreign port or place shall, at the same time he delivers a manifest of the cargo, and if there be no cargo, then at the time of making a report of the entry of the vessels pursuant to law, in addition to the other matter required to be reported, and before landing, or permitting to land, any Chinese passengers, deliver and report to the collector of customs of the district in which such vessels shall have arrived a separate list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time. Such list shall show the names of such passengers (and if accredited officers of the Chinese or of any other foreign Government, traveling on the business of that Government, or their servants, with a note of such facts), and the names and other particulars as shown by their respective certificates; and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo.

Master of vessel to furnish sworn list of passengers.

"Any refusal or willful neglect of any such master to comply with the provisions of this section shall incur the same penalties and forfeiture as are provided for a refusal or neglect to report and deliver a manifest of the cargo."

Penalty.

Section ten of said act is hereby amended so as to read as follows:

"SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found."

Liability of vessel.

Section eleven of said act is hereby amended so as to read as follows:

Persons aiding or abetting unlawful entry.

"SEC. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall aid or abet the same, or aid or abet the landing in the United States from any vessel, of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall on conviction thereof, be fined a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year."

Section twelve of said act is amended so as to read as follows:

Entry by land.

"SEC. 12. That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel.

Deportation.

And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to

Amended by act of May 5, 1892.

the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States; and in all such cases the person who

Liability for expenses of removal.

brought or aided in bringing such person to the United States shall be liable to the Government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several

Authority of State officers.

States and Territories of the United States are hereby invested with the same authority as a marshal or United States marshal in reference to carrying out the provisions of this act or the act of which this is amendatory, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation to be audited and paid by the same officers.

Cost of maintenance and return of person having required certificate.

And the United States shall pay all costs and charges for the maintenance and return of any Chinese person having the certificate prescribed by law as entitling such Chinese person to come into the United States who may not have been permitted to land from any vessel by reason of any of the provisions of this act."

Section thirteen of said act is hereby amended so as to read as follows:

Diplomatic officers exempt.

"SEC. 13. That this act shall not apply to diplomatic and other officers of the Chinese or other Governments travel-

ing upon the business of that Government, whose credentials shall be taken as equivalent to the certificate in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese persons."

Section fifteen of said act is hereby amended so as to read as follows:

Act applicable to "Chinese" generally. —"laborers." Amended by act of Nov. 3, 1893.

"SEC. 15. That the provisions of this act shall apply to all subjects of China and Chinese, whether subjects of China or any other foreign power; and the words Chinese laborers, wherever used in this act shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining."

Penalties.

SEC. 16. That any violation of any of the provisions of this act, or of the act of which this is amendatory, the punishment of which is not otherwise herein provided for, shall be deemed a misdemeanor, and shall be punishable by fine not exceeding one thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment.

Not to affect proceedings under former act.

SEC. 17. That nothing contained in this act shall be construed to affect any prosecution or other proceeding, criminal or civil, begun under the act of which this is amendatory; but such prosecution or other proceeding, criminal or civil, shall proceed as if this act had not been passed.

Approved, July 5, 1884.

ACT OF SEPTEMBER 13, 1888.

(25 Stat., p. 476.)

AN ACT to prohibit the coming of Chinese laborers to the United States.

Immigration of Chinese laborers prohibited.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the date of the exchange of ratifications of the pending treaty between the United States of America and His Imperial Majesty the Emperor of China, signed on the twelfth day of March, anno Domini eighteen hundred and eighty-eight, it shall be unlawful for any Chinese per-

son, whether a subject of China or of any other power, to enter the United States, except as hereinafter provided.[a]

Privileged classes.

SEC. 2. That Chinese officials, teachers, students, merchants, or travelers for pleasure or curiosity, shall be permitted to enter the United States, but in order to entitle themselves to do so, they shall first obtain the permission

Certificate of Chinese Government

of the Chinese Government, or other Government of which they may at the time be citizens or subjects.

Certificate of United States consul.

Such permission, and also their personal identity shall in such case be evidenced by a certificate to be made out by the diplomatic representative of the United States in the country, or of the consular representative of the United States at the port or place from which the person named therein comes. The certificate shall contain a full description of such person, of his age, height, and general physical features, and shall state his former and present occu-

—to be in duplicate.

pation or profession and place of residence, and shall be made out in duplicate.

One copy shall be delivered open to the person named and described, and the other copy shall be sealed up and delivered by the diplomatic or consular officer as aforesaid to the captain of the vessel on which the person named in the certificate sets sails for the United States, together with the sealed certificate, which shall be addressed to the collector of customs at the port where such person is to land.

Letter to collector.

There shall be delivered to the aforesaid captain a letter from the consular officer addressed to the collector of customs aforesaid, and stating that said consular officer has on a certain day delivered to the said captain a certificate of the right of the person named therein to enter the United States as a Chinese official, or other exempted person, as the case may be.

Penalties.

And any captain who lands or attempts to land a Chinese person in the United States, without having in his possession a sealed certificate as required in this section, shall be liable to the penalties prescribed in section nine of this act.

To whom applicable. "Chinese" generally.

SEC. 3. That the provisions of this act shall apply to all persons of the Chinese race, whether subjects of China or other foreign power, excepting Chinese diplomatic or consular officers and their attendants; and the words "Chinese

[a] In an opinion dated July 7, 1899, the Solicitor of the Treasury decided that sections 5 to 14, inclusive, of the act of September 13, 1888, (with the exception of section 12), did not depend upon the ratification of the treaty of March 12, 1888, and therefore became operative immediately upon the passage of the act. S. 21357. See act of April 29, 1902.

laborers" whenever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining. "Laborers." Amended by Act of Nov. 3, 1893.

SEC. 4. That the master of any vessel arriving in the United States from any foreign port or place with any Chinese passengers on board shall, when he delivers his manifest of cargo, and if there be no cargo, when he makes legal entry of his vessel, and before landing or permitting to land any Chinese person (unless a diplomatic or consular officer, or attendant of such officer) deliver to the collector of customs of the district in which the vessel shall have arrived, the sealed certificate and letters as aforesaid, and a separate list of all Chinese persons taken on board of this vessel at any foreign port or place, and of all such persons on board at the time of arrival as aforesaid. Such list shall show the names of such persons and other particulars as shown by their open certificates, or other evidences required by this act, and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo. Master to deliver certificate and letter to collector. —also separate sworn list of Chinese passengers.

The master of any vessel, as aforesaid, shall not permit any Chinese diplomatic or consular officer or attendant of such officer to land without having first been informed by the collector of customs of the official character of such officer or attendant. Diplomatic officers not to be landed without information from collector.

Any refusal or willful neglect of the master of any vessel to comply with the provisions of this section shall incur the same penalties and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo. Penalties.

SEC. 5. That from and after the passage of this act, no Chinese laborer in the United States shall be permitted, after having left, to return thereto, except under the conditions stated in the following sections. Return of laborers prohibited.

SEC. 6. That no Chinese laborer within the purview of the preceding section shall be permitted to return to the United States, unless he has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement. Exceptions—wife, child, or parent resident here. Property or choses in action of value of $1,000 here.

The marriage to such wife must have taken place at least a year prior to the application of the laborer for a permit to return to the United States, and must have been followed by the continuous cohabitation of the parties as man and wife. Time of marriage.

Property and choses in action must be bona fide.

If the right to return be claimed on the ground of property or of debts, it must appear that the property is bona fide and not colorably acquired for the purpose of evading this act, or that the debts are unascertained and unsettled,

Promissory notes insufficient.

and not promissory notes or other similar acknowledgments of ascertained liability.

Identification of returning laborer.

SEC. 7. That a Chinese person claiming the right to be permitted to leave the United States and return thereto on any of the grounds stated in the foregoing section, shall apply to the collector of customs of the district from which he wishes to depart at least a month prior to the time of his departure, and shall make on oath before the said collector a full statement descriptive of his family, or property, or debts, as the case may be, and shall furnish to said collector such proof of the facts entitling him to return as shall be required by the rules and regulations prescribed from time to time by the Secretary of the Treasury, and for any false swearing in relation thereto he shall incur the penalties of perjury.

He shall also permit the collector to take a full description of his person, which description the collector shall retain and mark with a number.

And if the collector, after hearing the proofs and investigating all the circumstances of the case, shall decide to issue a certificate of return, he shall at such time and place as he may designate, sign and give to the person applying

Certificate. —to be sole evidence given of right to return.

a certificate containing the number of the description last aforesaid, which shall be the sole evidence given to such person of his right to return.

—not to be transferred.

If this last-named certificate be transferred, it shall become void, and the person to whom it was given shall forfeit his right to return to the United States.

Limitation.

The right to return under the said certificate shall be limited to one year; but it may be extended for an additional period, not to exceed a year, in cases where, by reason of sickness or other cause of disability beyond his control, the holder thereof shall be rendered unable sooner to return, which facts shall be fully reported to and investigated by the consular representative of the United States at the port or place from which such laborer departs for the United States, and certified by such representative of the United States to the satisfaction of the collector of customs at the port where such Chinese person shall seek to land in the United States, such certificate to be deliv-

—extension in case of sickness or disability.

Certificate of sickness or disability.

ered by said representative to the master of the vessel on which he departs for the United States.

Return certificate indispensable.

And no Chinese laborer shall be permitted to re-enter the United States without producing to the proper officer of the customs at the port of such entry the return certificate herein required. A Chinese laborer possessing a certificate under this section shall be admitted to the United States only at the port from which he departed therefrom, and no Chinese person, except Chinese diplomatic or consular officers and their attendants, shall be permitted to enter the United States except at the ports of San Francisco, Portland, Oregon, Boston, New York, New Orleans, Port Townsend, or such other ports as may be designated by the Secretary of the Treasury.

Laborer to be admitted only at port from which he departed.

Chinese may enter only at certain ports.

Secretary of the Treasury to prescribe regulations.

SEC. 8. That the Secretary of the Treasury shall be, and he hereby is, authorized and empowered to make and prescribe, and from time to time to change and amend such rules and regulations, not in conflict with this act, as he may deem necessary and proper to conveniently secure to such Chinese persons as are provided for in articles second and third of the said treaty between the United States and the Empire of China, the rights therein mentioned, and such as shall also protect the United States against the coming and transit of persons not entitled to the benefit of the provisions of said articles.

—and form of certificates.

And he is hereby further authorized and empowered to prescribe the form and substance of certificates to be issued to Chinese laborers under and in pursuance of the provisions of said articles, and prescribe the form of the record of such certificate and of the proceedings for issuing the same, and he may require the deposit, as a part of such record, of the photograph of the party to whom any such certificate shall be issued.

Deposit of photographs.

Violation of act by master of vessel.

SEC. 9. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land, or attempt to land, or permit to be landed, any Chinese laborer or other Chinese person, in contravention of the provisions of this act, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished with a fine of not less than five hundred dollars, nor more than one thousand dollars, in the discretion of the court, for every Chinese laborer or other Chinese person so brought, and may also be imprisoned for a term of not less than one year, nor more than five years, in the discretion of the court.

Penalty.

Vessel in distress or touching at port.

SEC. 10. That the foregoing section shall not apply to the case of any master whose vessel shall come within the jurisdiction of the United States in distress or under stress of weather, or touching at any port of the United States on its voyage to any foreign port or place. But Chinese laborers or persons on such vessel shall not be permitted to land, except in case of necessity, and must depart with the vessel on leaving port.

Forgery of certificate.

SEC. 11. That any person who shall knowingly and falsely alter or substitute any name for the name written in any certificate herein required, or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, and any person other than the one to whom a certificate was issued who shall falsely present any such certificate, shall be deemed guilty of a misdemeanor, and upon conviction

Penalty.

thereof shall be fined in a sum not exceeding one thousand dollars and imprisoned in a penitentiary for a term of not more than five years.

Examination of passengers and comparison with list.

SEC. 12. That before any Chinese passengers are landed from any such vessel the collector, or his deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law; and the collector shall in person decide all questions in dispute with regard to the right of

Decision of collector subject to review by Secretary of the Treasury.

any Chinese passenger to enter the United States, and his decision shall be subject to review by the Secretary of the Treasury and not otherwise.

Arrest of Chinese unlawfully in United States.

SEC. 13. That any Chinese person or person of Chinese descent found unlawfully in the United States or its Territories may be arrested upon a warrant issued upon a complaint, under oath, filed by any party on behalf of the United States, by any justice, judge, or commissioner of any United States court, returnable before any justice, judge, or commissioner of a United States court, or before any United States court, and when convicted upon a hearing and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be

Deportation.

removed from the United States to the country whence he came.

Appeal to judge of district court.

But any such Chinese person convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the district court for the district.

A certified copy of the judgment shall be the process upon which said removal shall be made, and it may be executed by the marshal of the district or any officer having authority of a marshal under the provisions of this section.

Punishment of person aiding.

And in all such cases the person who brought or aided in bringing such person into the United States shall be liable to the Government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several States and Territories of the United States are hereby invested with the same authority in reference to carrying out the provisions of this act, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation, to be audited and paid by the same officers.

—liability for expenses of deportation.

Authority of State officers.

Diplomatic and consular officers.

SEC. 14. That the preceding sections shall not apply to Chinese diplomatic or consular officers or their attendants, who shall be admitted to the United States under special instructions of the Treasury Department, without production of other evidence than that of personal identity.

Repeal of prior acts.

[SEC. 15. That the act entitled "An act to execute certain treaty stipulations relating to Chinese," approved May sixth, eighteen hundred and eighty-two, and an act to amend said act, approved July fifth, eighteen hundred and eighty-four, are hereby repealed, to take effect upon the ratification of the pending treaty as provided in section one of this act.]

Approved, September 13, 1888.

ACT OF OCTOBER 1, 1888.

(25 Stat., p. 504.)

AN ACT a supplement to an act entitled "An act to execute certain treaty stipulations relating to Chinese," approved the sixth day of May, eighteen hundred and eighty-two.

Return of laborers prohibited.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, it shall be unlawful for any Chinese laborer who shall at any time heretofore have been, or who may now or hereafter be, a resident within the United States, and who shall have departed, or shall depart, therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States.

Certificates of identity forbidden—existing certificates vacated.

SEC. 2. That no certificates of identity provided for in the fourth and fifth sections of the act to which this is a supplement shall hereafter be issued; and every certificate heretofore issued in pursuance thereof, is hereby declared void and of no effect, and the Chinese laborer claiming admission by virtue thereof shall not be permitted to enter the United States.

Extension of provisions of former act.

SEC. 3. That all the duties prescribed, liabilities, penalties, and forfeitures imposed, and the powers conferred by the second, tenth, eleventh, and twelfth sections of the act to which this is a supplement are hereby extended and made applicable to the provisions of this act.

Repeal.

SEC. 4. That all such part or parts of the act to which this is a supplement as are inconsistent herewith are hereby repealed.

Approved, October 1, 1888. Repealed by convention of 1894. See 21, Op. A. G., 68.

ACT OF MAY 5, 1892.

(27 Stat., p. 25.)

AN ACT to prohibit the coming of Chinese persons into the United States.

Extension of period of exclusion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for a period of ten years from the passage of this act.

Deportation to China.

SEC. 2. That any Chinese person or person of Chinese descent, when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country: *Provided*, That in any case where such other country of which such Chinese person shall claim to be a citizen or subject shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China.

Deportation to country other than China.

—*proviso* in case of foreign tax.

Burden of proof on Chinese.

SEC. 3. That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States.

Imprisonment. Void. See Wong Wing v. U. S., 163 U. S., 228.

SEC. 4. That any such Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year and thereafter removed from the United States, as hereinbefore provided.

Writ of habeas corpus.

SEC. 5. That after the passage of this act, on an application to any judge or court of the United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed and such application shall be heard and determined promptly without unnecessary delay.

Bail not allowed.

Registration of resident laborers. Amended by act of Nov. 3, 1893.

SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence, and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as hereinbefore provided, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and if upon the hearing it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

Deportation.

Excuses.

Loss of certificate.

Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court.

Persons not laborers.

And any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge.

Secretary of Treasury to prescribe rules and forms.

SEC. 7. That immediately after the passage of this act the Secretary of the Treasury shall make such rules and regulations as may be necessary for the efficient execution of this act, and shall prescribe the necessary forms and furnish the necessary blanks to enable collectors of internal revenue to issue the certificates required hereby, and make such provisions that certificates may be procured in localities convenient to the applicants.

Contents of certificate.

Such certificates shall be issued without charge to the applicant, and shall contain the name, age, local residence, and occupation of the applicant, and such other description of the applicant as shall be prescribed by the Secretary of the Treasury, and a duplicate thereof shall be filed in the office of the collector of internal revenue for the district within which such Chinaman makes application.

Forgery.

SEC. 8. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in such certificate, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars or imprisoned in the penitentiary for a term of not more than five years.

Fees for services.

SEC. 9. The Secretary of the Treasury may authorize the payment of such compensation in the nature of fees to the collectors of internal revenue, for services performed under the provisions of this act, in addition to salaries now allowed by law, as he shall deem necessary, not exceeding the sum of one dollar for each certificate issued.

Approved, May 5, 1892.

NOTE.—The act of March 3, 1893, for the enforcement of the immigration and contract labor laws, does not apply to Chinese persons. Sec. 10, 27 Stat., 569.

ACT OF NOVEMBER 3, 1893.

(28 Stat., p. 7.)

AN ACT to amend an act, entitled "An act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, is hereby amended so as to read as follows:

"SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States who are entitled to remain in the United States before the passage of the act to which this is an amendment to apply to the collector of internal revenue of their respective districts within six months after the passage of this act for a certificate of residence; and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act and the act to which this is an amendment, or who, after the expiration of said six months, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as provided in this act and in the act to which this is an amendment, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of said United States judge, and by at least one credible witness other than Chinese, that he was a resident of the United States on the fifth of May, eighteen hundred and ninety-two; and if, upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

Resident laborers must register.

Arrest.

Deportation.

Excuses.

"Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall

Loss of certificates.

Persons other than laborers.

be in the discretion of the court; and any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge; and that no proceedings for a violation of the provisions of said section six of said act of May fifth, eighteen hundred and ninety-two, as originally enacted, shall hereafter be instituted, and that all proceedings for said violation now pending are hereby discontinued:"

Proceedings under former act discontinued.

Felons can not register.

Provided, That no Chinese person heretofore convicted in any court of the States or Territories or of the United States of a felony shall be permitted to register under the provisions of this act; but all such persons who are now subject to deportation for failure or refusal to comply with the act to which this is an amendment shall be deported from the United States as in said act and in this act provided, upon any appropriate proceedings now pending or which may be hereafter instituted.

Deportation.

"Laborer" defined.

SEC. 2. The words "laborer" or "laborers," wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

"Merchant" defined.

The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

Evidence to establish former status of merchant.

Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

Such order of deportation shall be executed by the United States marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal, and shall not be admitted to bail. Execution of order of deportation. Bail not allowed.

The certificate herein provided for shall contain the photograph of the applicant, together with his name, local residence, and occupation, and a copy of such certificate, with a duplicate of such photograph attached, shall be filed in the office of the United States collector of internal revenue of the district in which such Chinaman makes application. Photograph of resident.

Such photograph in duplicate shall be furnished by each applicant in such form as may be prescribed by the Secretary of the Treasury.

Approved, November 3, 1893.

(NOTE.—By act of December 7th, 1893, collectors are not entitled to fees for registering Chinese. 28 Stat., p. 575.)

ACT OF AUGUST 18, 1894.

(28 Stat., p. 390.)

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes.

Be it enacted, etc.,

* * * * * * *

In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury. Finality of decision.

* * * * * * *

Approved, August 18, 1894.

JOINT RESOLUTION OF JULY 7, 1898.

(U. S. Stat., 1897–98, p. 751.)

* * * There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such condi-

tions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

ACT OF JUNE 6, 1900.

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.

Be it enacted, etc.,

* * * * * * * * *

Commissioner-General of Immigration shall administer Chinese exclusion laws.

* * * and hereafter the Commissioner-General of Immigration, in addition to his other duties, shall have charge of the administration of the Chinese exclusion law and of the various acts regulating immigration into the United States, its Territories, and the District of Columbia, under the supervision and direction of the Secretary of the Treasury.

Approved, June 6, 1900 (31 Stat., p. 611).

ACT OF MARCH 3, 1901.

AN ACT Supplementary to an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May, 1892, and fixing the compensation of commissioners in such cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the district attorney of the district in which any Chinese person may be arrested for being found unlawfully within the United States, or having unlawfully entered the United States, to designate the United States commissioner within such district before whom such Chinese person shall be taken for a hearing.

SEC. 2. That a United States commissioner shall be entitled to receive a fee of five dollars for hearing and deciding a case arising under the Chinese-exclusion laws.

SEC. 3. That no warrant of arrest for violations of the Chinese-exclusion laws shall be issued by United States commissioners excepting upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector, deputy collector, or inspector of customs, immigration inspector, United States marshal,

or deputy United States marshal, or Chinese inspector, unless the issuing of such warrant of arrest shall first be approved or requested in writing by the United States district attorney of the district in which issued.

SEC. 4. That this act shall take effect immediately.

Approved, March 3, 1901 (31 Stat., p. 1093).

* * * * * * *

SEC. 101. That Chinese in the Hawaiian Islands when this act takes effect may within one year thereafter obtain certificates of residence as required by "An Act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, as amended by an Act approved November third, eighteen hundred and ninety-three, entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May fifth, eighteen hundred and ninety-two," and until the expiration of said year shall not be deemed to be unlawfully in the United States if found therein without such certificates: *Provided, however*, That no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands.

* * * * * * *

Act approved April 30, 1900 (36 Stat., p. 161).

ACT OF APRIL 29, 1902.

AN ACT To prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all laws now in force prohibiting and regulating the coming of Chinese persons, and persons of Chinese descent, into the United States, and the residence of such persons therein, including sections five, six, seven, eight, nine, ten, eleven, thirteen, and fourteen of the Act entitled "An Act to prohibit the coming of Chinese laborers into the United States," approved September thirteenth, eighteen hundred and eighty-eight, be, and the same are hereby, re-enacted, extended, and continued so far as the

same are not inconsistent with treaty obligations, until otherwise provided by law, and said laws shall also apply to the island territory under the jurisdiction of the United States, and prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland territory of the United States, whether in such island territory at the time of cession or not, and from one portion of the island territory of the United States to another portion of said island territory: *Provided, however*, That said laws shall not apply to the transit of Chinese laborers from one island to another island of the same group; and any islands within the jurisdiction of any State or the District of Alaska shall be considered a part of the mainland under this section.

SEC. 2. That the Secretary of the Treasury is hereby authorized and empowered to make and prescribe, and from time to time change, such rules and regulations not inconsistent with the laws of the land as he may deem necessary and proper to execute the provisions of this Act and of the Acts hereby extended and continued and of the treaty of December eighth, eighteen hundred and ninety-four, between the United States and China, and with the approval of the President to appoint such agents as he may deem necessary for the efficient execution of said treaty and said Acts.

SEC. 3. That nothing in the provisions of this Act or any other Act shall be construed to prevent, hinder, or restrict any foreign exhibitor, representative, or citizen of any foreign nation, or the holder, who is a citizen of any foreign nation, of any concession or privilege from any fair or exposition authorized by Act of Congress from bringing into the United States, under contract, such mechanics, artisans, agents, or other employees, natives of their respective foreign countries, as they or any of them may deem necessary for the purpose of making preparation for installing or conducting their exhibits or of preparing for installing or conducting any business authorized or permitted under or by virtue of or pertaining to any concession or privilege which may have been or may be granted by any said fair or exposition in connection with such exposition, under such rules and regulations as the Secretary of the Treasury may prescribe, both as to the admission and return of such person or persons.

SEC. 4. That it shall be the duty of every Chinese laborer, other than a citizen, rightfully in, and entitled to remain

in any of the insular territory of the United States (Hawaii excepted) at the time of the passage of this Act, to obtain within one year thereafter a certificate of residence in the insular territory wherein he resides, which certificate shall entitle him to residence therein, and upon failure to obtain such certificate as herein provided he shall be deported from such insular territory; and the Philippine Commission is authorized and required to make all regulations and provisions necessary for the enforcement of this section in the Philippine Islands, including the form and substance of the certificate of residence so that the same shall clearly and sufficiently identify the holder thereof and enable officials to prevent fraud in the transfer of the same: *Provided, however*, That if said Philippine Commission shall find that it is impossible to complete the registration herein provided for within one year from the passage of this Act, said Commission is hereby authorized and empowered to extend the time for such registration for a further period not exceeding one year.

Approved, April 29, 1902 (32 Stat., part 1, p. 176).

AN ACT to establish the Department of Commerce and Labor.

(32 Stat., p. 825.)

* * * * * * *

SEC. 2. That there shall be in said Department an Assistant Secretary of Commerce and Labor, to be appointed by the President, who shall receive a salary of five thousand dollars a year. He shall perform such duties as shall be prescribed by the Secretary or required by law. There shall also be one chief clerk and a disbursing clerk and such other clerical assistants as may from time to time be authorized by Congress; and the Auditor for the State and other Departments shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Commerce and Labor, and of all bureaus and offices under his direction, all accounts relating to the Light-House Board, Steamboat-Inspection Service, Immigration, Navigation, Alaskan fur-seal fisheries, the National Bureau of Standards, Coast and Geodetic Survey, Census, Department of Labor, Fish Commission and to all other business within the jurisdiction of the Department of Commerce and Labor, and certify the balances arising thereon to the Divison of Bookkeeping and Warrants and send forthwith a copy of each certificate to the Secretary of Commerce and Labor.

* * * * * * *

SEC. 4. That the following-named offices, bureaus, divisions, and branches of the public service, now and heretofore under the jurisdiction of the Department of the Treasury, and all that pertains to the same, known as the Light-House Board, the Light-House Establishment, the Steamboat-Inspection Service, the Bureau of Navigation, the United States Shipping Commissioners, the National Bureau of Standards, the Coast and Geodetic Survey, the Commissioner-General of Immigration, the commissioners of immigration, the Bureau of Immigration, the immigration service at large, and the Bureau of Statistics, be, and the same hereby are, transferred from the Department of the Treasury to the Department of Commerce and Labor, and the same shall hereafter remain under the jurisdiction and supervision of the last-named Department; * * *.

* * * * * * *

SEC. 7. That the jurisdiction, supervision and control now possessed and exercised by the Department of the Treasury over the fur-seal, salmon, and other fisheries of Alaska and over the immigration of aliens into the United States, its waters, territories and any place subject to the jurisdiction thereof, are hereby transferred and vested in the Department of Commerce and Labor: *Provided*, That nothing contained in this Act shall be construed to alter the method of collecting and accounting for the head-tax prescribed by section one of the Act entitled "An Act to regulate immigration," approved August third, eighteen hundred and eighty-two. That the authority, power and jurisdiction now possessed and exercised by the Secretary of the Treasury by virtue of any law in relation to the exclusion from and the residence within the United States, its territories and the District of Columbia, of Chinese and persons of Chinese descent, are hereby transferred to and conferred upon the Secretary of Commerce and Labor, and the authority, power and jurisdiction in relation thereto now vested by law or treaty in the collectors of customs and the collectors of internal revenue, are hereby conferred upon and vested in such officers under the control of the Commissioner-General of Immigration, as the Secretary of Commerce and Labor may designate therefor.

* * * * * * *

SEC. 13. That this Act shall take effect and be in force from and after its passage: *Provided, however*, That the

provisions of this Act other than those of section twelve in relation to the transfer of any existing office, bureau, division, officer or other branch of the public service or authority now conferred thereon, to the Department of Commerce and Labor shall take effect and be in force on the first day of July, nineteen hundred and three, and not before.

Approved, February 14, 1903.

AN ACT granting additional quarantine powers and imposing additional duties upon the Marine-Hospital Service.

* * * * * * *

SEC. 7. That whenever it shall be shown to the satisfaction of the President that by reason of the existence of cholera, or other infectious or contagious diseases, in a foreign country there is serious danger of the introduction of the same into the United States, and that notwithstanding the quarantine defense this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce the same is demanded, in the interest of the public health, the President shall have power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate and for such period of time as he may deem necessary.

* * * * * * *

Act approved February 15, 1893 (27 Stat., p. 449).

CHINESE REGULATIONS.

(Approved July 27, 1903.)

RULE 1. Under the provisions of the laws and treaties in relation to the exclusion of Chinese persons, only such persons as are registered Chinese laborers, officials of the Chinese Government, teachers, students, travelers for curiosity or pleasure, merchants and their lawful wives and minor children, laborers seeking in good faith to pass through the country to foreign territory, seamen as provided in Rules 15 and 16, and persons whose physical condition necessitates immediate hospital treatment shall be permitted to land at any port of the United States.

RULE 2. Only those Chinese persons who are expressly declared by the laws and treaty relating to the exclusion of Chinese to be admissible shall be allowed to enter the United States, and those only upon compliance with the requirements of said laws and treaty and of regulations issued thereunder. (See Op. Atty. Genl., Vol. XXII, p. 132.) If the Chinese person has been born in the United States, neither the immigration acts nor the Chinese exclusion acts prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States apply to such person. (169 U. S. Sup. Court, 653.)

RULE 3. Chinese aliens shall be examined as to their right to admission to the United States under the provisions of the laws regulating immigration as well as under the laws in relation to the exclusion of Chinese persons. (See Op. Atty. Genl., June 24, 1903.)

RULE 4. No Chinese person, other than a Chinese diplomatic or consular officer and attendants, shall be permitted to enter the United States except at the ports of San Francisco; Portland, Oreg.; Boston; New York; New Orleans; Port Townsend; Richford, Vt.; Malone, N. Y.; Portal, N. Dak.; Sumas, Wash.; Honolulu, Hawaii; San Juan and Ponce, P. R.; San Diego, Cal., and Tampa, Fla. (See Rule 5.)

RULE 5. Under an opinion of the Attorney-General (Vol. XXI, p. 357) the Chinese consul at the port of departure from the United States is required to certify to the sickness or other cause of disability which a Chinese laborer alleges in excuse for his failure to return within one year. To secure the benefit of the conditional extension of the time of absence beyond one year the Chinese laborer making such claim must have departed from a port within the jurisdiction of a Chinese consular officer.

RULE 6. Immediately upon the arrival of Chinese persons at any port mentioned in Rule 4 it shall be the duty of the officer in charge of

the administration of the Chinese exclusion laws to adopt suitable means to prevent communication with them by any persons other than officials under his control, to have said Chinese persons examined promptly, as by law provided, touching their right to admission and to permit those proving such right to land.

RULE 7. The examination prescribed in Rule 6 should be separate and apart from the public, in the presence of Government officials and such witness or witnesses only as the examining officer shall designate, and, if, upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal and his counsel should be permitted, after duly filing notice of appeal, to examine, but not make copies of, the evidence upon which the excluding decision is based.

RULE 8. Every Chinese person refused admission under the provisions of the exclusion laws by the decision of the officer in charge at the port of entry must, if he shall elect to take an appeal to the Secretary, give written notice thereof to said officer within two days after such decision is rendered.

RULE 9. Notice of appeal provided for in Rule 8 shall act as a stay upon the disposal of the Chinese person whose case is thereby affected until a final decision is rendered by the Secretary; and, within three days after the filing of such notice, unless further delay is required to investigate and report upon new evidence, the complete record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith, shall be forwarded to the Commissioner-General of Immigration by the officer in charge at the port of arrival, accompanied by his views thereon in writing; but on such appeal no evidence will be considered that has not been made the subject of investigation and report by the said officer in charge.

RULE 10. Additional time for the preparation of cases after the expiration of three days next succeeding the filing of notice of appeal will be allowed only in those instances in which, in the judgment of said officer in charge, a literal compliance with Rule 9 would occasion injustice to the appellant or the risk of defeat of the purposes of the law, and the reasons for delay beyond the time prescribed shall in every instance be stated in writing in the papers forwarded to the Commissioner-General of Immigration.

RULE 11. Every officer in charge of the enforcement of the Chinese exclusion laws at a port of entry shall cause to be kept in books, to be furnished by the Bureau of Immigration, complete records of every Chinese person arriving thereat, synopses of which shall be forwarded upon appropriate blanks, not later than the tenth day of each calendar month for the next preceding month, to the Commissioner-General of Immigration, as also weekly reports upon forms to be furnished by the Bureau of Immigration.

RULE 12. Every Chinese person permitted to land from a vessel for examination at some designated place shall be still considered as on shipboard until finally and lawfully landed, so far as relates to his admission to the United States and so far as relates to the responsibility of the master, agent, or owner of such vessel for his safe guarding, maintenance, and hospital expenses.

RULE 13. The master, agent, or owner of any vessel or other means of transportation by which Chinese persons are brought to any port of entry named in Rule 4 shall, at least twenty-four hours in advance thereof, notify the chief officer in charge of the administration of the Chinese exclusion laws at said port of the intended time of sailing of said vessel or departure of other vehicle therefrom, in order that the said officer may cause to be placed on board thereof every Chinese person whose application for permission to land has been finally denied.

RULE 14. Every Chinese person seeking permission to land for the purpose of passing through the United States to a foreign destination must comply with the provisions of Department Circular No. 163 of December 8, 1900, and if found, in the judgment of the chief officer in charge at the port of arrival, to be seeking the privilege of transit with an ulterior purpose of gaining an unlawful access to the United States, shall be refused permission to land.

RULE 15. No Chinese person, other than a seaman, will be permitted to land temporarily under bond, except upon the certificate of a surgeon of the Public Health and Marine-Hospital Service that such temporary landing is necessitated by the condition of his health, and with the permission of the Secretary of Commerce and Labor, under such conditions as he shall prescribe.

RULE 16. To prevent violations of law by Chinese seamen discharged or granted shore leave at ports of the United States, bond with approved security in the penalty of $500 for each such seaman shall be exacted for his departure from and out of the United States within thirty days.

RULE 17. Every Chinese person refused admission to the United States, being actually or constructively on the vessel or other conveyance by which he was brought to a port of entry, must necessarily be returned to the country whence he came, at the expense of the transportation agency owning such vessel or conveyance, since such vessel or conveyance returns to the port or place at which such Chinese person embarked for the United States.

RULE 18. Orders for the deportation of Chinese persons can only be given by a justice, judge, or commissioner of a United States court upon his decision that such Chinese persons have been found to be unlawfully within the United States, and the cost of making any such deportation is payable from the appropriation for the enforcement of the Chinese-exclusion laws.

RULE 19. Hereafter an original certificate or residence can be issued to a Chinese laborer only upon the finding of a justice, judge, or commissioner of a United States court that such Chinese laborer was a resident of the United States during the period of registration and that by reason of accident, sickness, or other unavoidable cause, he was then unable to secure such a certificate, except under section 4 of the act approved April 29, 1902.

RULE 20. Duplicate certificates of residence shall be issued only upon satisfactory proof to the Commissioner-General of Immigration that the Chinese person upon whose behalf application therefor is made has actually, by unavoidable accident, lost his original certificate.

RULE 21. The burden of proof in all cases rests upon Chinese persons claiming the right of admission to, or residence within, the United States, to establish such right affirmatively and satisfactorily to the appropriate Government officers, and in no case in which the law prescribes the nature of the evidence to establish such right shall other evidence be accepted in lieu thereof, and in every doubtful case the benefit of the doubt shall be given by administrative officers to the United States Government.

RULE 22. No authenticated copy of a judicial finding that a Chinese person was born in the United States shall be accepted as conclusive in favor of the person presenting it, unless he be completely identified as the person to whom such authenticated copy purports to relate.

RULE 23. All certificates, or other evidence, offered by Chinese persons to establish their right of admission to the United States, other than laborers' registration certificates, shall be retained by the officers in charge of the administration of the Chinese exclusion laws at ports of entry; the immunity from arrest of the Chinese persons admitted thereon resting upon their exclusive occupation in the pursuits for which their certificates, or other evidence, claim that they respectively seek admission to the United States.

RULE 24. Every Chinese laborer found within the United States without the certificate of registration prescribed by law shall be arrested, after being allowed a reasonable opportunity under the close surveillance of the officer making such arrest to produce such certificate, by any officer charged with the enforcement of the Chinese-exclusion laws; and shall be taken by such officer before a justice, judge, or commissioner of a United States court in order that a warrant may be issued upon the oath of such officer for the commitment and trial of the said Chinese laborer.

RULE 25. The Supreme Court having decided that the lawful wife and minor children of a Chinese merchant may be admitted to the United States without presenting the certificate prescribed by section 6 of the act approved July 5, 1884, the attention of administrative officers is directed to the nature of the evidence required by section 2

of the act approved November 3, 1893, to establish the right of a domiciled Chinese merchant to readmission after temporary absence from the United States, and the said officers are directed to require such evidence as will give reasonable assurance that every Chinese applicant for admission as the lawful wife or minor child of a resident Chinese merchant sustains the actual relationship claimed to such merchant, and, in the case of a child, that such child is beyond question a minor.

RULE 26. The following officers have been authorized by their respective governments to issue the certificates prescribed by section 6 of the act approved July 5, 1884: The registrar-general for the British colony of Hongkong; the chief comptrollers of Chinese immigration at Victoria and New Westminster, British Columbia, for the Dominion of Canada; officers designated as superintendents of customs (or taotai) for the Empire of China. Until other officers are designated by their respective governments, only certificates issued by those above enumerated shall be accepted as conforming to the requirements of the law; and Chinese persons of the admissible classes coming from countries which have not designated officers to issue such certificates can not be admitted to the United States.

RULE 27. Chinese persons who gain admission to the United States as members of the admissible classes and who after admission become laborers shall be arrested as being unlawfully in this country, as provided in Rule 24.

RULE 28. The omission from a certificate prescribed by section 6 of the act approved July 5, 1884, of any of the information required by said section is fatal to the sufficiency of such certificate as evidence of the right of the person to whom issued to enter the United States.

RULE 29. Chinese persons applying for admission upon the ground of having been domiciled in the United States as merchants shall be required to establish, to a reasonable certainty, that they are actually owners of the business claimed or members of the firm owning such business, with proof of the amounts actually paid for their respective interests, the times at which such payments were made and, if residents of the United States during the period of registration, whether they failed to register and, if so, the reason therefor.

RULE 30. With the papers on appeal from a decision of the chief officer in charge at a port of entry there shall be transmitted to the Commissioner-General of Immigration all the evidence bearing upon the case appealed, including the evidence offered in accordance with the treaty and laws by returning Chinese laborers who have remained out of the United States for a period of time in excess of one year from the date of their departure to show that the delay was occasioned by their sickness or some other cause of disability beyond their control.

RULE 31. Every Chinese laborer holding a return certificate, if detained by his sickness or by other disability beyond his control, for a time in excess of one year after the date of his departure from the United States, shall produce to the chief officer in charge at the port of return, which must be the port from which said laborer departed, a certificate to that effect from the Chinese consul at said port, based upon an accompanying report by the United States consular officer at the foreign port at which said laborer embarked for the United States, that said consular officer has investigated the statements of said laborer and believes that he was unavoidably detained for the time specified and for the reason stated.

RULE 32. In considering evidence touching the right of a Chinese student to enter the United States, administrative officers should be governed by the opinion of the Solicitor of the Treasury Department (of June 15, 1900), that a Chinese student within the intention of the treaty of December 8, 1894, and of the laws, is "a person who intends to pursue some of the higher branches of study, or one who seeks to be fitted for some particular profession or occupation for which facilities of study are not afforded in his own country; one for whose support and maintenance in this country, as a student, provision has been made, and who, upon completion of his studies, expects to return to China."

RULE 33. Every Chinese merchant resident within the United States who desires to go abroad temporarily, to avoid unnecessary delay in securing admission upon his return, may transmit to the chief officer in charge at the intended port of departure, not less than thirty days prior thereto, affidavits of two credible witnesses, other than Chinese, showing said merchant's actual ownership, in whole or in part, of an established mercantile business in this country, the amount of his interest therein, the nature of his personal employment in conducting said business, and that during the entire year antecedent to the date of such affidavits he engaged in no manual labor except such as was necessarily incident to the conduct of said business. If after a thorough investigation said officer is satisfied of the truth of the statements contained in the above-mentioned affidavits, he may indorse thereon over his signature his finding to that effect, coupled with a statement that the said Chinese merchant will, upon his return to the port of departure and proper identification, be permitted to enter the United States, unless some of said statements should subsequently be shown to be false; provided, however, that said merchant still retains, unchanged, the mercantile interest owned by him at the time of his departure.

RULE 34. As an additional means of securing prompt action upon the case of every Chinese person seeking admission as a returning merchant, as well as to save him the risk of a possibly fruitless voyage,

the chief officer shall, at the time of departure of every such Chinese person, whose case has not already been investigated under Rule 33, furnish him with the following notice (properly filled out) and attached form of letter for his use in sending notification of his intended return:

OFFICE OF ——— ———,
PORT OF ——— ———,
——— ——— (Date) ——— — —.

SIR: In accordance with Rule 34 of Regulations issued by the Secretary of Commerce and Labor on the 27th day of July, 1903, you are hereby notified that, in order to avoid as far as possible the risk of making an unnecessary trip which would result from a failure to establish your right to admission, you should, at least ninety days and not exceeding four months prior to your intended arrival at this port, notify the undersigned officer of your intention to return, the approximate date thereof, giving your name and foreign address, and a statement of your claims to the right of admission, on the subjoined blank. You may now, or within the time above mentioned, submit the evidence required by law to establish your mercantile status. The said claims will, on receipt of such notice, be promptly investigated and a formal notification of the result of such investigation will be sent to you at the address given. This decision is not final, and you are not precluded, if such result is adverse, from obtaining upon your arrival at a port of the United States a further investigation of your claims.

Respectfully,

(Name of officer) ——— ———,
(Title of officer) ——— ———.

(Address) ——— ———,
(Date) ——— —, —.

CHIEF OFFICER IN CHARGE ENFORCEMENT CHINESE EXCLUSION LAWS,
Port of ——— ———.

SIR: In compliance with the above notification, delivered to me prior to my departure from the United States, you are informed that I intend to return thereto, through your port, per ——— on or about ——— —, 190–.

I departed from the United States on the steamship ———, which sailed from your port on ——— —, 190–.

I have filed with you the evidence required by law to support my claim of right to readmission. I am a merchant and member (or proprietor) of the store of ——— ———, at ———, in which my interest was, and still remains, $———.

I respectfully request that my claim be preinvestigated, and that I may be notified before ——— —, 190–, at the above address, whether I will be permitted to reenter the United States, and, if so, upon what condition.

Respectfully, (Name) ——— ———.

Upon the receipt of such notification, the chief officer in charge shall make, or cause to be made, a thorough investigation of the claim therein made and send due notice of his conclusions in regard thereto to the applicant who, upon arrival, shall establish his identity with the sender of the notification and submit such additional evidence as may be necessary to prove his right to admission. If the evidence previously secured shall establish the right of such applicant to admission, and is not controverted, then he shall be admitted without delay, but otherwise he shall be refused admission until he shall establish his right thereto.

RULE 35. Every departing Chinese laborer who has been furnished with a return certificate under the provisions of section 7 of the act approved September 13, 1888, must be informed by the officer by whom such certificate is granted that upon his return to the port of departure, as a prerequisite to admission there must exist one of the grounds recited in Article II of the convention of December 8, 1894, to entitle him to admission after a temporary absence from the United States.

RULE 36. The officer issuing a return certificate to a departing laborer shall at the time of such issuance furnish said laborer with the following notice (properly filled out) and attached form of letter for his use in sending information of his intended return:

OFFICE OF ——— ———,
PORT OF ——— ———,
(Date) ——— —, 19—.

——— ———

SIR: In accordance with Rule 36 of regulations issued by the Secretary of Commerce and Labor, on the 27th of July, 1903, you are hereby informed that, in order to avoid the risk of a possibly fruitless voyage, you should at least ninety days and not exceeding four months prior to your intended return to this port, notify the undersigned officer of the approximate date of such return, giving your name and foreign address on the subjoined blank form, and stating the ground or grounds on which you claim the right to admission to the United States, as well as the occasion of your delay, if there has been such delay in returning, beyond one year from the time of your departure. An investigation of your case will, on receipt of such notification, be promptly made and you will be formally advised of the result thereof by a letter sent to the foreign address given.

Respectfully,
(Name of officer) ——— ———,
(Title of officer) ——— ———.

(Address) ——— ———.
(Date) ——— —, ———.

CHIEF OFFICER IN CHARGE ENFORCEMENT CHINESE EXCLUSION LAWS,
Port of ——— ———.

SIR: In compliance with the above notification, delivered to me prior to my departure from the United States, you are informed that I intend to return thereto through your port, per steamship ———, on or about ——— —, 190–.

I was granted return certificate No. ——, dated ——— —, 190–, and departed from your port per steamship ——— on ——— —, 190–.

I claim the right of admission because I have in the United States (either):

A father, named ——— ———, or mother, named ——— ———, residing at ———; a child (or children), named ——— ———.

A lawful wife, named ——— ———, residing at ———, to whom I was married on the —— day of ———, and with whom I have continuously cohabited since the said ——— marriage.

The following property of the clear, unencumbered value of $———, ———, ———.

The following bona fide debts due me and pending settlement, and not evidenced by promissory notes or other similar acknowledgments of ascertained liability, and not colorably acquired for the purpose of evading the law:

Due from ——— ———, $———.
Due from ——— ———, $———.
Address of debtors, ——— ———.

I respectfully request that my claims be preinvestigated and that I may be noti-

fied at the above address before ——— —, 190–, whether I will be permitted to reenter the United States.

I was delayed —— days —— months beyond the year after my departure by ———, and will submit the evidence thereof required by the law and regulations.

Respectfully,

(Name) ——— ———.

RULE 37. Upon the arrival of any registered Chinese laborer at a port of the United States, he shall exhibit his return certificate to the chief officer in charge of the enforcement of the Chinese exclusion laws at said port, and if the evidence already secured in such a case establishes the right of such a returning Chinese laborer to admission and is not controverted, then he should be admitted without delay, but otherwise he shall be refused admission until he establishes his right thereto.

RULE 38. Administrative officers are hereby required, in accordance with section 7 of the act of September 13, 1888, to exact of every registered Chinese laborer, applying for a return certificate, not merely a statement of the ground, or grounds, on which such laborer claims a right thereto, but also proofs of the existence of such ground or grounds, either in the form of oral or of written testimony in detail by not less than two credible witnesses, who shall satisfy such officers that they have had opportunity to know the circumstances to which they testify. Until such proof is supplied, the investigation preliminary to granting or refusing the return certificate sought shall not be made.

RULE 39. If a returning Chinese laborer is admitted, his certificate of residence, which must have been left with the officer who granted him a return certificate, shall be returned to him and the said return certificate be taken up. After indorsing upon such return certificate his action in the case and the date thereof, the chief officer in charge shall forward it to the Commissioner-General of Immigration, accompanied, if the Chinese applicant is denied admission, by said laborer's certificate of residence.

RULE 40. Every Chinese person claiming the privilege of transit through the United States to foreign territory under the provisions of Article III of the convention of December 8, 1894, shall, as a condition precedent to being allowed such privilege, comply with the following requirements:

(*a*) The applicant shall be required to produce to the chief officer in charge of the enforcement of the Chinese exclusion laws at the port of arrival a prepaid through ticket across the whole territory of the United States, land or water, intended to be traversed (and to his alleged foreign destination according to the manifest of the vessel on which he arrives), and such other reasonable proof as may be required of him to satisfy the said officer that a bona fide transit only is intended and that the applicant does not seek the foreign destination named by him with an ulterior purpose of thereby gaining access to

the United States in violation of law; and such ticket and other evidence in writing presented by the applicant must be so stamped, or marked, and dated by the said officer, or his deputy, as to prevent their use a second time; but no such applicant shall be considered as intending in good faith to make such transit only if he has already, on same arrival, made application for and been denied admission to the United States.

(*b*) The applicant in such case, or some responsible person in his behalf, or the transportation company whose through ticket he holds, shall furnish to the said chief officer in charge a good and sufficient bond in the penal sum of $500 conditioned for applicant's continuous transit through and actual departure from the United States within a reasonable time, not exceeding in any instance twenty days from the date upon which said privilege is granted; but the said bond shall not be required of any such applicant who remains on shipboard for transit through the water territory of the United States, or who is transferred from one vessel to another vessel in a port of the United States for a similar transit, unless the vessel on which said applicant departs may touch at another port of the United States on the way to its foreign port or destination.

(*c*) The applicant in every such case shall furnish to said chief officer in charge, to be taken as directed by said officer, a photograph of himself in triplicate, and shall submit, if he is not a member of one of the classes exempted in Article III of the treaty of December 8, 1894, to the physical examination of his person, required by the Bertillon system of identification.

RULE 41. The chief officer in charge of the enforcement of the Chinese exclusion laws at the port of arrival shall prepare a descriptive list, to which one of the photographs required by Rule 40 (*c*) shall be attached, bound in book form, for file in his office, containing as to each Chinese applicant for the privilege of passing through the United States to foreign territory, the following information: Name, age, sex, last place of residence, and the data referred to therein by file number required for his identification. To the said descriptive list there shall be attached a dated and signed statement by the said chief officer in charge that applicant has complied with all the provisions of Rule 40, and that being assured of applicant's good faith the privilege of transit under bond has been accorded him.

RULE 42. Two copies of the bound descriptive list, required by Rule 41, shall be prepared by the chief officer in charge on detached blanks corresponding in form with the said bound descriptive list, to each of which shall be attached one of the photographs required by Rule 40 (*c*), and upon both of said photographs, as well as on the one attached to said bound list, shall be stamped the seal of the said chief officer in charge, so placed as not to cover any part of the face. One of said copies shall be forwarded by the first mail after it is prepared

to the officer in charge of the intended port of exit and the remaining one shall be given to the conductor of the train, or to the captain of the vessel, by which the Chinese person to whom they relate is carried, for delivery to the said officer at the port of exit.

RULE 43. One of the copies described in Rule 42 shall be retained by the officer in charge at the port of exit, for his files, and the other, after an indorsement has been made thereon, duly signed and dated, to the effect that the Chinese person named therein has been identified and has departed from the United States, shall be returned by mail to the officer by whom it was prepared, and its receipt by him, duly executed as herein required, shall be his authority for cancellation of the bond given on behalf of the Chinese person, as provided in Rule 40 (*b*), to whom said descriptive list refers.

RULE 44. Every Chinese person seeking admission to the United States under the provisions of section 3 of the act approved April 29, 1902, for the purpose of taking part in any fair or exhibition authorized by act of Congress, shall, as a condition precedent to such admission, comply with the following conditions, and officers charged with the enforcement of the Chinese exclusion laws shall likewise, so far as action on their part is required, conform thereto. This rule takes the place of Treasury Department Circular No. 5, Bureau of Immigration, dated January 7, 1903.

(*a*) Every such person shall furnish to the officer in charge of the enforcement of the Chinese-exclusion laws at the port of entry satisfactory evidence that he is a holder of a privilege from the officers of said exposition or an employee of a holder of such a privilege, engaged to take part therein.

(*b*) He shall furnish to the said officer in charge at the port of entry a photograph of himself, in triplicate, and shall submit to such examination as may be deemed necessary to insure his identification.

(*c*) He shall, if admitted, proceed immediately, by direct and continuous travel, to the said exposition, wherever located; remain there during his stay in the United States; engage while there solely in the occupation for which he was admitted; return within thirty days after the close of said exposition by direct and continuous travel to the port at which he was admitted and thence depart, by the first vessel sailing thereafter, to China or to the country of which he is a citizen or subject.

(*d*) He shall furnish to the United States officer in charge, by whom he is admitted, a bond of $500, with a responsible bonding and surety company as surety, conditioned for his immediate departure to said exposition grounds, his constant attendance and employment at said grounds, and his departure from the United States, all in accordance with the next preceding regulation.

(*e*) The requirements of the next preceding paragraph (*d*), as well as of paragraphs (*i*) and (*j*) hereinafter, shall not apply to Chinese mer-

chants seeking admission to make a display of their goods at such exposition, who shall be permitted to land upon presentation of a certificate to the foregoing effect, issued by their government and viséed by the United States consular or diplomatic officer at the port of departure.

(*f*) The following form of record shall be kept in duplicate by the officer in charge at the port of admission of all Chinese persons admitted in accordance with these regulations, the original to be kept on file at said port and the duplicate to be forwarded to the Bureau of Immigration, Department of Commerce and Labor:

[Form of Chinese record.]

Chinese Employee's Record of Admission.

DEPARTMENT OF COMMERCE AND LABOR. BUREAU OF IMMIGRATION. File No. — of Record ——. Name —— ——. Native of ——. Employed by —— ——, of ——, an exhibitor at the ——. When admitted, —— —, —. (Here attach photograph to both duplicate and original.)	No. — U. S. IMMIGRATION SERVICE, *Port of* —— ——, —— ——. This is to certify, that —— ——, a native of ——, who is duly accredited as an employee of —— ——, of ——, an exhibitor at the ——, U. S. A., has been permitted to enter the United States as such employee (or exhibitor) in pursuance of an act of Congress approved April 29, 1902. (Name of officer) —— ——, (Title of officer) ——. (Duplicate to be forwarded to Commissioner-General of Immigration.)

(*g*) An officer, or officers if necessary, will be designated to remain at the grounds of said exposition, whose duty it shall be to keep, in duplicate, a record, in the following form (unless hereafter modified), of every Chinese person admitted under these rules and regulations to take part in said exposition:

[Form of report.]

File No., ——. (Place to attach photograph.)	Name of employee or exhibitor, —— —— Sex, ——. Age, ——. Name of exhibitor by whom employed, —— ——. Character of work to be done in connection with exhibition, ——. What hours and how many per diem employed, ——. Time of arrival at exhibition grounds, ——. Time of departure from exhibition grounds, ——. —— ——. (Signature of Chinese employee or exhibitor.) —— ——. (Signature of officer or officers.) (Duplicate to be forwarded to Commissioner-General of Immigration.)

Said officer or officers shall also have such supervision over every such Chinese person and such duties in relation to them as are authorized by law and these rules and regulations and instructions issued thereunder.

(*h*) That one of the photographs provided for in paragraph (*b*) hereinbefore shall be sent by the officer at the port of arrival at which any such Chinese person is admitted to the officer or officers provided for in paragraph (*g*) of these regulations, who shall attach said photograph to the form of report prescribed, using it as a means of identification of the person whose portrait it is.

(*i*) Should any such Chinese person desire to leave the grounds of said exposition temporarily, he must apply to the officer provided for in paragraph (*g*) hereof, who may issue to him a dated card, giving his name and other particulars for his identification, and stating that he is permitted to absent himself from said grounds not longer than forty-eight hours from the date of said card, which shall, upon his return within the specified time, be delivered to said officer and canceled.

(*j*) All Chinese persons holding such cards who fail to return within the specified period shall be deemed to be unlawfully within the United States, and the bonds given on their behalf shall be forfeited and such person shall be deported. The officer designated to issue said cards shall promptly notify the Commissioner-General of Immigration of the absence, in violation of these regulations, of any Chinese person, in order that the penalty of the bond given in his behalf shall be collected and such Chinese person deported.

(*k*) Immediately after the expiration of the thirty days following the close of said exposition, the officers at the ports of arrival at which any such Chinese person is admitted are directed to report to the Commissioner-General of Immigration the total number, together with names, etc., of the Chinese persons who were admitted at their ports, respectively, for the purpose stated, and the numbers and names of those who have been properly identified and permitted to depart, in accordance with these regulations.

RULE 45. With a view to assisting in the decision of the cases of alleged Chinese merchants applying for admission to the United States as such, the following instructions are promulgated, for the guidance of all officers called upon to investigate the character of establishments in which such applicants claim to have an active or financial interest, to wit:

(*a*) In every case when investigation shows that the alleged mercantile establishment has operated in connection with it, a laundry, restaurant, gambling establishment, or other non-mercantile business, or where there is anything to indicate that such establishment is in fact different from that which is claimed, it is directed that photographs

be taken of the room or rooms occupied by the firm, and, if necessary, a view of the front or rear of the building or both.

(*b*) These photographs should be of a size not less than 5 by 7 inches nor more than 8 by 10 inches, and should be taken in such manner as to clearly show the real character of the business reported upon.

(*c*) The cost of each photograph shall include three unmounted prints thereof, together with the original negative. The latter should be taken in charge by the officer making the investigation, and by him carefully preserved, subject to the orders of the Department. If subsequently ordered sent elsewhere, negatives should be carefully packed in wooden boxes with excelsior filling, and should be properly labeled and shipped by express—never by mail—with suitable marks upon the exterior of package to insure care of the contents.

(*d*) One print of each photograph should be retained with the negative, the remaining two prints to accompany the report of investigation sent to the official who originally desired the inquiry made.

(*e*) Care should be taken to avoid excessive charges by photographers, but reasonable expense for this service will be allowed upon request made of the Bureau of Immigration, Department of Commerce and Labor, such items to be paid from the appropriation "Enforcement Chinese exclusion acts." Receipt of photographer will be required as a subvoucher in each instance.

RULE 46. The provisions of the laws regulating immigration, excluding those which prescribe payment of the head tax, apply to the residents and natives of Porto Rico and Philippine Islands, and, moreover, the provisions of the laws relating to the exclusion of Chinese apply to all such persons as are of the Chinese race, except those who are born in the United States. The citizens and residents of said islands, therefore, should be admitted to the United States upon the same conditions, except as to payment of the head tax provided for in section 1 of the act approved March 3, 1903, and subject to the same examinations as are enforced against people from countries over which the United States claims no right of sovereignty whatever.

RULE 47. The appropriation "Enforcement Chinese exclusion acts" should be charged with the following expenses:

(*a*) The cost of maintenance of Chinese persons who are taken into custody, up to and including the date upon which warrant issued by a United States judge or commissioner is received by the marshal.

(*b*) The cost of maintenance of Chinese prisoners, commencing with the date writ of deportation is first received by the marshal, provided the said order of deportation is not subsequently reversed upon appeal.

(*c*) The cost of deportation, including railroad and steamship fares of prisoners and marshal or deputy, authorized expenses for guard hire and maintenance en route.

Upon receiving writs of deportation marshals should at once make written report to the Commissioner-General of Immigration, Department of Commerce and Labor, Washington, D. C., giving names of the prisoners, where confined in jail, and when the period of appeal provided by section 13 of the act approved September 13, 1888, will expire. Instructions will then be issued as to the route to be followed, number of guards to be employed, and to whom accounts are to be presented or forwarded for settlement.

RULE 48. The Department of Justice, under date of August 26, 1897, gave the following instructions:

United States attorneys are hereby directed, either in person or by their assistants, to appear on behalf of the Government to secure the proper enforcement of the law at all hearings held in their respective districts, to determine whether Chinese persons or persons of Chinese descent, who have been arrested under the Chinese exclusion laws, have a lawful right to remain in this country.

RULE 49. Officers in charge of the enforcement of the Chinese exclusion law shall not issue any certificate, letter, or other document, or any duplicate thereof, other than those provided for by law and these regulations, setting forth the status of a Chinese person as a resident of this country, or otherwise indorsing such person.

RULE. 50. It shall be the duty of the officer in charge at the port of entry to register and make a Bertillon record of all Chinese laborers arriving at or departing from said port, which record shall show the individual, family and tribal name, age, occupation, when and where followed, last place of residence, physical peculiarities, and such other pertinent information as may assist in the identification or investigation of such person in case of his returning to the United States. A duplicate of the record of such registry shall be transmitted to the Commissioner-General of Immigration for each such vessel or railway train.

RULE 51. Officers employed in the administration of the immigration and Chinese exclusion laws are notified that all communications to the Department upon official matters must be addressed to the Commissioner-General of Immigration or to the Secretary of Commerce and Labor.

RULE 52. Under the authority conferred by section 7 of an act approved February 14, 1903, entitled "An act to establish the Department of Commerce and Labor," the authority, power, and jurisdiction in relation to the exclusion of Chinese persons and persons of Chinese descent heretofore vested by law and treaty in collectors of customs have been conferred upon and vested in the following officers, under the control of the Commissioner-General of Immigration:

Officer in charge.	Station.	Jurisdiction.
Geo. B. Billings	Boston, Mass.	Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, and Vermont.
Wm. E. Howard	New Orleans, La.	Louisiana and Mississippi.
Jno. J. S. Rodgers	Philadelphia, Pa	Pennsylvania, New Jersey, and Delaware.
Kazis Krauczunas	Ketchikan, Alaska	Alaska.
Geo. W. Webb	Tucson, Ariz.	Arizona and New Mexico.
L. T. Plummer	Chicago, Ill	Illinois, Kentucky, Tennessee, and Indiana.
H. E. Tippett	Detroit, Mich	Michigan.
W. D. Morse	Minneapolis, Minn	Minnesota and Wisconsin.
Alfred Hampton	Helena, Mont.	Montana and Idaho.
Isaac H. Marrow	Toledo, Ohio.	Ohio.
Louis Adams	El Paso, Tex.	Texas.
A. W. Paine	Salt Lake City, Utah	Utah, Nevada, and Wyoming.
James McCabe	Denver, Colo	Colorado, Nebraska, Kansas, Indian Territory, and Oklahoma.
A. J. You	Mobile, Ala	Alabama and Georgia.
Richard K. Campbell	Bureau of Immigration	Maryland, Virginia, West Virginia, and District of Columbia.
James R. Dunn	St. Louis, Mo.	Missouri, Iowa, and Arkansas.
F. W. Berkshire	New York, N. Y.	New York.
J. H. L. Eager	Tampa, Fla.	Florida.
W. F. Schlaar	Portal, N. Dak	North and South Dakota.
H. H. North	San Francisco, Cal.	California.
Thos. M. Fisher	Port Townsend, Wash	Washington.
J. H. Barbour	Portland, Oreg	Oregon
J. K. Brown	Honolulu, Hawaii	Hawaii.
F. V. Martin	San Juan, P. R.	Porto Rico.

RULE 53. The certificates prescribed by section 6 of the act of July 5, 1884, on which Chinese of the exempt class were admitted to the United States, should be canceled by officers in charge by writing across the face thereof in red ink the fact of the admission and the date thereof.

RULE 54. In the inforcement of the provisions of section 2 of the act of November 3, 1893, relating to the application for admission of alleged returning Chinese merchants, it will not be enough to have witnesses testify that an applicant, for at least one year before his departure from the United States, was not engaged in the performance of any manual labor except such as was necessary in the conduct of his business as such merchant, but the testimony should show specifically the kind of work the Chinaman has done during the entire year, and, after detailing the character of such work, should say that he has not performed any other labor than that specifically set forth. (S. 21039.)

RULE 55. A Chinese person claiming the right to be permitted to leave the United States and return thereto as a duly registered laborer shall apply in person to the officer in charge of the district[a] in which he resides at least a month prior to the time of his departure; shall deposit with said officer a certificate of registration from the internal-revenue collector for the district in which he resided at the time of registration, and shall make on oath before the officer in charge, in writing, a full statement descriptive of his family, or, property, or debts, as the case may be, and fully describing himself, giving his age, name, height, local residence, occupation, color of eyes and com

[a] See Circular on page 54.

plexion, and distinguishing marks, if any, and naming the port from which he expects to depart from the United States, which shall be one of those designated in Rule 4. Such written description shall be filed in duplicate, and to each shall be permanently attached a photograph of the Chinese person referred to therein. The officer in charge, or his deputy, with whom such certificate of registration and written description are filed, will make a thorough examination to ascertain whether the applicant is registered, and as to the accuracy of the descriptive statement: that the photograph accompanying the latter for the purpose of identification is that of the person described in such certificate and statements, and that his height, weight, and descriptive physical marks are accurately given, and will then write his official signature in part across such photograph and in part upon the adjoining portion of the written descriptive statement, to prevent substitution. The said officer in charge will then trainsmit the certificate of registration to the Commissioner-General of Immigration, for comparison with the record thereof in his office, in respect not only to name and date therein, but in all other particulars. At the same time the said officer in charge will in person or through an immigrant or Chinese inspector make thorough investigation as to the facts stated therein. As soon as practicable thereafter the said officer in charge will transmit such registration certificate, one copy of the sworn statement, and the reports of investigation to the officer in charge of the district from which such Chinese laborer intends to depart from the United States, and at the same time will transmit to said Chinese laborer the duplicate copy of such sworn statement, with instructions to present the same in person to the officer in charge at the port of departure. Upon the receipt of such certificate of registration, the duplicate copies of said sworn statement, and the reports of investigation, the officer in charge or his deputy at said port of departure, after one month from the date of filing of the original application in the office of the officer in charge of the district in which said Chinese laborer resides, if he finds that the person presenting such duplicate statement is the Chinese person therein described, and is entitled thereto, may sign and give to such person on his departure from said port a certificate containing the number of the description referred to, in the following form:

No. ——. UNITED STATES OF AMERICA.

Certificate issued to Chinese laborer departing from the United States with the intention of returning thereto under the treaty between the United States of America and the Empire of China signed March 17, 1894, and proclaimed by the President of the United States December 8, 1894.

This is to certfy that —— ——, a Chinese laborer, described in identification paper numbered ——, port of ——, departed from this port for —— on this ——

day of ——, 190–, with the intention of returning to the United States via this port within twelve months from said date.

Given under my hand and seal this —— day of ——, 190–, at ——, State of ——.

[SEAL.] ——— ———,

Officer in Charge, Port of ——, District of ——.

If the last-named certificate be transferred it shall become void, and the person to whom it was given by the officer in charge shall forfeit his right to return to the United States.

The certified description should be carefully preserved by the officer in charge at the port of exit as a means of identification of the Chinese person therein mentioned, who, in order to avail himself of the privilege conferred by said article II of the treaty, must return via the port of departure within one year from the date of his leaving the United States, unless prevented by sickness or other disability beyond his control.

RULE 56. The officer in charge at the port of departure shall send a copy of the certified description, with photograph of the person therein named attached, and also one of the stubs hereinafter referred to, to the Commissioner-General of Immigration; said stub and said copy of the certified description shall be filed together.

Certificates as above described, with a serial number attached, will be issued to officers in charge at ports from which Chinese depart upon application therefor to the Commissioner-General of Immigration. In all instances, officers in charge will fill out the blanks on the stubs of the certificates. Officers in charge will submit reports to the Commissioner-General of Immigration weekly of Chinese persons departing from and returning to their respective ports, debiting themselves with the number of certificates received from the Department, crediting themselves with the number used and reporting the number remaining on hand. The officers in charge shall cancel all certificates presented on admission of returning Chinese and forward said certificates so canceled to the Commissioner-General of Immigration.

RULE 57. Certificates of residence issued to Chinese registered laborers, if found elsewhere than in possession of persons to whom issued, should be taken up and deposited with the officer in charge, subject to orders of the Department.

RULE 58. Chinese laborers duly registered under act of 1892 are not required to register under act of 1893 to secure admission. (T. D., 23344, November 7, 1901.)

RULE 59. Only persons registered as Chinese laborers are entitled to the return certificate provided for by section 6, act approved May, 1892. (T. D., 23525, February 20, 1902.)

RULE 60. The authority, power, and jurisdiction in relation to the registration of Chinese lawfully resident in the United States, heretofore vested by law in collectors of internal revenue, are hereby transferred to and conferred upon H. L. Pittenger, Chinese inspector, Bureau of Immigration, Washington, D. C.

RULE 61. In view of the provisions of section 1 of the act approved April 29, 1902, it will be necessary for Chinese persons of the classes mentioned in article 3 of the convention of December 8, 1894, who are resident in the insular territory of the United States, to comply with the terms of section 6 of the act approved July 5, 1884, and for this purpose the permission of such persons to go from one insular territory to another insular territory of the United States, or from such insular territory to the mainland territory of the United States, shall be granted by an officer designated for that purpose by the chief executives of said insular territories, respectively, and the duties imposed by section 6 of the act approved July 5, 1884, upon United States diplomatic and consular officers in foreign countries in relation to Chinese persons of the said classes shall be discharged by the chief officers in charge of the enforcement of the Chinese exclusion acts at the ports, respectfully, from which any members of such excepted classes intend to depart from any insular territory of the United States.

F. P. SARGENT,
Commissioner-General of Immigration.

Approved.
GEO. B. CORTELYOU,
Secretary of Commerce and Labor.

[1903.—Bureau Circular No. 4.]

Supplemental to Rule 55, Chinese Regulations, adopted July 27, 1903.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION,
Washington, December 1, 1903.

To whom it may concern:

In consideration of the hardships imposed upon resident Chinese laborers, as a result of the comparatively small number of officers designated by Rule 52 of the Departmental Regulations of July 27, 1903, to discharge the duties heretofore imposed upon collectors of customs by the various laws in relation to Chinese exclusion, under the authority of section 7 of the act approved February 14, 1903 (32 U. S. Stat., p. 825), the immigration officer whose official station is most convenient of access to any registered Chinese laborer desiring a return certificate is hereby designated as the appropriate officer before

whom application for such return certificate may be made, to whom proofs of the claims upon which any such application is based are to be submitted, and by whom an investigation and report thereon are to be made to the officer in charge at the intended port of departure from the United States.

In other respects the provisions of Rule 55 of Departmental Regulations of July 27, 1903, remain in full force, except that it will not be necessary for the investigating officer to give hereafter, in his report to the officer in charge at the port of departure, the weight of the Chinese applicant for a return certificate.

F. P. SARGENT,
Commissioner-General.

Approved.
GEO. B. CORTELYOU,
Secretary.

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FILE COPY.

Supreme Court of the United States.

No. 501.

THE UNITED STATES,

Petitioner,

vs.

SING TUCK or KING DO and thirty-one others.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

BRIEF FOR RELATORS.

R. M. Moore,
W. W. Cantwell,
Of Counsel for Relators.

Appeal Printing Co., 14 Vesey St., New York. Tel. 192 Cortlandt.

34034

Supreme Court of the United States.

THE UNITED STATES, Petitioner, vs. SING TUCK or KING DO and thirty-one others.	No. 591.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

Brief for Relators.

The petitioners, thirty-two in number, applied to the United States Circuit Court for the Northern District of New York, for a writ of *habeas corpus*, which writ was allowed October 23d, 1903, and returnable in the United States Circuit Court House at Utica on the 10th day of November, 1903. The petitioners alleged that they were Chinese persons born within the United States of America and citizens thereof; that they were restrained of their liberty and detained by D'Arcy, Chinese Inspector at Malone, New York, in what

is known as the Detention House, an establishment jointly maintained by the United States Government and the Canadian Pacific Railroad, a foreign corporation, and that the petitioners had been denied admission to the United States by the said inspector.

And they further alleged that the said Chinese Inspector had no right or authority to pass upon the rights of the said Chinese to enter the United States, but had authority only to pass upon the rights of *aliens* seeking to enter the United States.

Petition, pages 1 and 2.

They allege that they were born in the United States, and have the right to have that allegation tried and determined in the courts of the United States, and by the judicial department of the Government, and that the question of citizenship cannot be determined by the executive officer of the government so as to deprive them of their rights to appeal to the courts for a due trial and determination of that question of fact, that *due process of law* guarantees them this right. The return to the writ alleges the denial of admission by the Inspector and that such denial cannot be reviewed by a writ of *habeas corpus*.

The Circuit Court dismissed the writ and remanded the prisoners, holding that the Circuit Court had no jurisdiction to review the determination of the immigrant officer of the United States, denying the petitioners herein the right to enter the United States (Opinion, pages 60–73), and an order was accordingly entered, dismissing the writ and remanding the prisoners, which order was entered on the 3d day of December, 1903 (page 74).

From that order the petitioners duly appealed

to the Circuit Court of Appeals, Second Circuit, and in their assignment of error (page 76) they assert that the judgment is erroneous and contrary to law, and that the said judgment, order and decision should have allowed to the petitioners the issuing of the writ of *habeas corpus* to determine the issues raised by the petition and answer, to wit.: Were and are the petitioners citizens of the United States, which issue is a question of fact, and could only be determined by taking evidence on the issues raised by the petition and answer, and that the said decision, judgment and order was further erroneous in that it held the alleged decision of the immigration officer to be final and *res judicata;* that, as a matter of fact, no competent or legal decision was ever rendered by the said inspector, and even if such a decision had been legally rendered by the proper immigrant officer, it would not be final and *res judicata* as to the question of citizenship, as the inspector's authority is limited to the rights of *aliens* seeking to enter the United States.

The Circuit Court of Appeals reversed the District Court and remanded cause for enquiry into the status of relators (Opinion, pages 80-81). From that decision a writ of certiorari was allowed to this court.

POINT ONE.

A person of Chinese descent born within the United States is a citizen thereof.

The provisions of the Chinese Exclusion Act do not apply to persons born within the United States of Chinese parents.

U. S. v. Wong Kim Ark, 169 U. S., 653.

Congress has delegated to the immigration officer the right to exclude from the United States certain *aliens* seeking admission; among them a class of Chinese aliens, but in all of the statutory provisions relative to the rights, powers and duties of the immigration officer with regard to determining admission of persons seeking to enter the United States, the word *alien* is used and their powers and duties begin and end with *aliens*, and it is contended that it is because the power and jurisdiction of an immigrant officer is limited to aliens only; that the United States Supreme Court in the Wong Kim Ark case decided that the provisions of the Chinese Exclusion Act did not apply to Chinese persons born within the United States.

The immigrant officer has no common law power, authority or jurisdiction, hence his powers must be limited to those conferred by statute, and those deal exclusively with *aliens*, therefore, it is only where the applicant is concededly an alien and seeks to enter as an alien, that the inspector has jurisdiction, and in such case his decision is not reviewable in the Constitutional Courts.

POINT TWO.

Citizenship is a right. Every person claiming it has the constitutional right to have it determined judicially in a constitutional Court.

Congress cannot withdraw from judicial cognizance a matter which is the subject of a suit at common law or in equity. This right of citizenship is safe-guarded by the Constitution of the United States, which provides that "no person shall be deprived of life, liberty of property, without *due process of law.*" That the right of citizenship is a liberty and property right is found by the Trial Court (page 91, fol. 271). "Citizenship is a question that involves the status, liberty and property rights of the person or persons refused admission or proceeded against. A citizen has the right to live in the country of which he is a citizen; to go and come as he pleases, even to go and return from a foreign country if he conforms to the quarantine and other laws on the subject; and to own property, and exercise many rights not belonging to an alien."

If these rights existed and are safeguarded by the Constitution and can only be taken away by a judicial determination it follows, that the writ of *habeas corpus* to review the findings of the immigrant inspector, who is in no sense a judicial officer, and whose powers are limited to the investigation of rights of aliens, is not a decision such as is contemplated by the Constitution of the United States in safeguarding the liberty and property rights of citizens.

The only decisions that we have been able to find where this question has been directly before the

court was in the 94 Fed. Rep., at page 834, which was a decision of the Circuit Court of Appeals. In that case the defendant had been denied admission by the collector at the port of San Francisco; claim was made by the petitioner that he was a citizen of the United States and as such had the right to review the collector's findings by *habeas corpus*, which he did. The precise question as to whether the decision of the collector was *res judicata* where the claim was made by the petitioner that he was a citizen and not an alien was not directly passed upon in the case, but the court in determining that case makes use of this language: "Before taking up the merits of the case we will first inquire whetner the case is regularly and properly before the court," and they solved that question in favor of the propriety of the proceeding, which was, as in this case, a proceeding by *habeas corpus*.

In Gee Fook Sing v. United States (49 F. R., 146), the Circuit Court of Appeals in the Ninth Circuit re-affirms the doctrine of the Wong Kim Ark case, namely, that the provisions of the various Chinese Exclusion Acts do not apply to a Chinese born within the United States and adds: "That any person alleging himself to be a citizen of the United States, and desiring to return to his country from a foreign land, and that he is prevented from doing so without due process of law, and who on that ground applies to any United States Court for a writ of *habeas corpus*, is entitled to have a hearing and a judicial determination of the facts so alleged; and that no act of Congress can be understood or construed as a bar to such hearing and judicial determination."

This case was cited and followed in the opinion of the Circuit Court of Appeals in the case at bar. (See Opinion, page 81.)

Again in the Won Kim Ark case the United States Supreme Court, by implication, at least, ratifies the legality and regularity of the practice here adopted by discharging the defendant on a writ of *habeas corpus* after he had been denied admission by the collector.

The relators were restrained of their liberty by an administrative officer of the government. If they are citizens then the administrative officer had no power to detain them, much less to refuse them entry. The only remedy for the relators, by which the question of citizenship can be settled, is an application for a writ of *habeas corpus*, and the District Court has jurisdiction thereof.

> Jew Wong Loy vs. United States, 91 Fed. Rep., 240.

In such case the duty of the court is to inquire into the legality of the detention which is admitted. The performance of this duty is not a review of the action of the Chinese Inspector. The pretended refusal of the inspector to admit the relators was void for want of jurisdiction and there was consequently no action and no refusal by him. Prior to the Act of August 18th, 1894 (28 Stat., p. 390), the refusal of the inspector was not binding upon the courts.

> *In re* Jung Ah Lung, 25 Fed. Rep., 141, and confirmed in the 124 U. S., p. 621.

The Act of 1894 above referred to merely provided that in every case where an *alien* is excluded from admission the decision of the appropriate immigration officer, if adverse, shall be final unless reversed on appeal to the Secretary of the Treasury.

This act has no force when applied to a per-

son seeking admission upon the ground of citizenship.

The refusal to grant the writ of *habeas corpus* would be a practical suspension of the privilege in contravention of the Constitution; the writ having been issued, the duty of the court is to investigate and determine whether the restraint complained of is unlawful, viz., is the petitioner a citizen. Such inquiry and determination is not in review of the action of the inspector but is independent thereof.

The trial court in his opinion (page 61) says: "This court will take testimony and determine the question of citizenship unless the decision of the inspector * * * not appealed from is final and conclusive, *res judicata*, on the question of citizenship."

Thus holding as above contended that it was the duty of the court to investigate the issues of citizenship raised by the petition and answer, unless he was estopped from so doing by the decision of the inspector, and finally holding that the decision of the inspector is *res judicata*, and therefore the court cannot take evidence upon the question of citizenship. This was error.

As above stated, the decision of the inspector is final and *res judicata* only in case of an *alien*, and the jurisdiction of the inspector depends upon the applicant being an *alien*, hence, the question here raised as to whether the applicant is an alien or a citizen is one that goes to the jurisdiction of the inspector, and if it be determined that he is a citizen then the inspector, in assuming to pass upon his right to enter, acts without jurisdiction.

It would be a strange rule of law that would permit an executive officer to decide in his own favor a question upon which his jurisdiction depended and then assumed to act upon that juris-

diction, and the question of his right or jurisdiction to act could not be reviewed in the courts. A question of jurisdiction of a court, even, is always a question that may be raised by *habeas corpus*.

POINT THREE.

If the contention of the respondent is sustained, then the constitutional right to a writ of habeas corpus is denied.

Under the special rules of practice for the United States Courts for the Northern District of New York, it is provided that no application for a writ of *habeas corpus* shall be allowed in a Chinese case until after the applicant has been denied admission by the appropriate immigration officer at Malone, New York, hence, by a rule of practice, the petitioners are denied the right in a Judicial Court to seek their release from confinement until after the inspector has denied them admission; and then by a rule of law, if the decision of the Trial Court herein is to be sustained, they are denied the writ. As well might they have taken the short cut and said that no writ of *habeas corpus* should issue in Chinese cases. Notwithstanding the constitutional guaranty that a writ of *habeas corpus* should not be denied or suspended, except in certain cases therein provided. Under this procedure no application can be made for a writ until a certain thing has been done to the detriment of the applicant, and after that thing is done according to the rule of law laid down by the Trial Court the writ will not lie.

POINT FOUR.

The pretended trial and adjudication by the immigrant inspector in these cases was not due process of law.

Under the statute the Secretary of Commerce and Labor has the right to make such rules and regulations for the carrying into effect the provisions of the Chinese Exclusion Act as he may deem proper.

On the 1st of July, 1903, in pursuance of such authority the said secretary adopted many rules, among them the following:

"Rule 6. Immediately upon the arrival of Chinese persons at any port mentioned in Rule 4, it shall be the duty of the officer in charge of the administration of the Chinese exclusion laws to adopt suitable means to prevent communication with them by any persons other than officials under his control, to have said Chinese persons examined promptly, as by law provided, touching their right to admission and to permit those proving such right to land."

"Rule 7. The examination prescribed in Rule 6 should be separate and apart from the public, in the presence of the Government officials and such witness or witnesses only as the examining officer shall designate, and, if upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal and his counsel should be permitted, after duly filing notice of appeal, to examine, but not make copies of, the evidence upon which the excluding decision is based."

"Rule 21. The burden of proof in all cases rests upon Chinese persons claiming the right of ad-

mission to, or residence within, the United States, to establish such right affirmatively and satisfactorily to the appropriate *Government officers*, and in no case in which the law prescribes the nature of the evidence to establish such right shall other evidence be accepted in lieu thereof, and, in every doubtful case, the benefit of the doubt shall be given by administrative officers to the United States Government."

And the pretended trial and adjudication in these cases was had under and in pursuance of these rules. An adjudication of such a character in any court, whether constitutional or not, cannot be said to be an adjudication according to *due process of law*. A trial which excluded one of the parties to it from all communications with any person except those opposed to them in the suit, as provided in Rule 6, or which provided for "only such witnesses as the examining officer shall designate" and which does not permit a party to have counsel until after the adjudication is had, or communicate with counsel, witnesses or friends in any manner whatsoever until after the adjudication is had, cannot be said to be an adjudication according to *due process of law*.

The relators are deprived of their liberty without due process of law.

(*a*) The immigrant inspector is not a judicial officer.

(*b*) The relator is not permitted to be represented by counsel or to consult counsel.

(*c*) The relators, under the rules laid down by the department above quoted, could not produce witnesses, except such as were designated by the examining officer.

(*d*) They could not consult with friends and witnesses to prepare any case they might present.

(*e*) The benefit of the doubt, if any existed, is declared to be in favor of the Government, contrary to the rules of evidence.

(*f*) The relators were not apprised of the charge against them or the nature and cause of their detention.

(*g*) The relators had no notice of the time or place of the examination and no opportunity to produce witnesses, and no right to examine them themselves or by counsel.

(*h*) No right of appeal to a judicial tribunal was accorded the relators.

(*i*) The rules above referred to constitute a delegation of power to an administrative officer in derogation of the common law rights of a citizen and permits the officer to make rules of evidence, procedure, etc.

"It is a principle that lies at the foundation of all just government that no man shall be deprived of his life, liberty or property without due process of law. Every disregard of this principle by courts, legislatures or citizens tends directly towards distrust, insecurity, disorder and anarchy."

Burton v. Platter, 10 U. S. App., 657.

"The legislature is not vested with the power to arbitrarily provide that any procedure it may choose to declare such shall be regarded as due process of law."

Colon v. List, 153 N. Y., 188.

Article 14 of the amendments of the Constitution of the United States is a restraint on the legislative as well as on the executive and judicial

powers of the government, and cannot be so construed as to leave Congress free to make any process "due process of law" by its mere will.

Meyers v. Shields, 61 Fed. Rep., 713.
Holden v. Hardy, 169 U. S., 366.
Murray v. Hoboken Land Co., 18 How., 272.
Dorman v. State, 34 Ala., 216.

In the latter case the court said:

"If life, liberty and property could be taken away by the direct operation of a statute, the enjoyment of these rights would depend upon the will and caprice of the legislature, and the provision would be a mere nullity. * * * An act of the legislature is not, and nothing less than a regular judicial trial is 'due process of law' within the meaning of this clause of the constitution."

See, also,

In re Ziebold, 23 Fed. Rep., 791.

Daniel Webster, in his argument for the plaintiffs-in-error in Dartmouth College v. Woodard, 4 Wheat., 518, defined "due process of law" thus:

"By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

Applying this definition many times quoted by our courts with approval, to the case of the relators, we find that the relators had no hearing in any complete sense of the term and no trial in any sense. They had no counsel and were not permitted to consult counsel. They could produce

no witnesses except such as were designated by their accusers. The benefit of the doubt, if any existed, was taken to be against them. They were given no notice of their trial. They were not even apprised of the charge against them or the nature and cause of their detention. They had no opportunity to produce any witnesses until after the examining officer had concluded his examination of the relators. Such a hearing lacks every semblance of a trial where orderly procedure governs.

As applied to judicial proceedings the term "due process of law" means a course of proceeding according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. It is imperative that there be a court of competent jurisdiction; that the proceeding be regular and appropriate to the question involved; and that the trial be a fair one.

Rees v. Watertown, 19 Wall, 107.
Carr v. Brown, 38 Atl. Rep., 9.
Burton v. Platter, 10 U. S. App., 657.
Davidson v. New Orleans, 96 U. S., 97.
Dwight v. Williams, 4 McLean, 581.
Parsons v. Russell, 11 Mich., 113.
Huber v. Riley, 53 Pa. St., 112.
In re Ah Lee, 5 Fed. Rep., 899.
Pennoyer v. Neff, 95 U. S., 723.

"Due process of law" cannot be had without notice of the proceeding. Notice is an essential element of the term "due process of law."

Hennessey v. Volkening, 30 Abb. N. Cas. (N. Y. Super, Ct.), 100.

"Due process of law implies the right of the person affected thereby to be present before the

tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right or controverting by proof every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law."

Ziegler v. South, etc., Ala. R. Co., 58 Ala., 594.

Due process of law means that the party shall have his day in court; this means the right to introduce evidence, examine and cross-examine witnesses for and against him, be represented by counsel if he so desires, and to have the questions asked and testimony given in conformity to the rules of evidence as established by our courts.

Brown v. Hummel, 6 Pa. St., 86.
Jenson v. Union Pac. R. R. Co., 6 Utah, 253.

None of these elements which constitute due process of law entered into the pretended trial of the relators by the inspector. And even if they did the tribunal was not one of competent jurisdiction to determine the question at issue.

The laws relating to the exclusion of Chinese are inapplicable to Chinese persons born in the United States. Such persons coming to our country are not immigrants, and are not Chinese persons. They are citizens of Chinese descent. The immigration inspector or Chinese inspector has no shred of authority over such persons. The mere allegation of the applicant for admission that he

is a citizen of the United States entitles him to a full judicial determination of that fact, and when denied him his proper remedy is this writ. Not even an act of Congress can be a bar to such judicial hearing and determination. The Chinese inspector or immigrant officer in charge is not invested by Congress with judicial powers over citizens. His acts and determinations relate solely to aliens. His office possesses none of the characteristics of a judicial tribunal. On the contrary, he is invested with certain powers and duties which are so abhorrent to the judicial determination of facts that no court of law would adopt them.

The rules above quoted seem a sufficient negative answer to the question, "Was the proceeding before the inspector due process of law?" Taken in connection with the statute and decisions we contend that it is impossible to bring the examination and adjudication of the inspector within these terms.

POINT FIVE.

There was no evidence before the inspector upon which he could base a judicial determination.

All of the petitioners relying upon their citizenship, and the rights that go with such citizenship, to wit.: to go and come at will, and acting under advice of counsel, ignored the immigration officers at Malone, New York, and refused to present any case whatever before them, and refused to answer any questions put to them, as it appears by the examination of the several petitioners (Case, pp. 6-58). If, as they claimed, they were citizens, they

had a perfect right to ignore the pretended authority and jurisdiction of the inspector and resist any interference with their persons.

Notwithstanding this fact, the Trial Court holds (p. 72) "The petitioners cannot complain if when called upon to speak, and when it was their duty to speak they remained mute, refusing to present the facts calling for a favorable decision, if such facts existed." This conclusion is erroneous and contrary to law. It makes no difference whether the skin of the citizen is white or yellow, if he be a citizen of the United States. The Chinese has as much right to go and come at will as has the learned trial judge or any other of our citizens, and would it be urged upon this court that if a white citizen coming from Montreal to New York City over the same route attempted by these petitioners, was taken from the train at Malone by the inspector, and because of his refusal to answer questions put to him by the inspector, or submit proof of citizenship, he should be put into a house of detention and finally turned back from the borders of the United States at the mere whim or caprice of the inspector upon the ground that he was an alien of the prohibited class, and if such person be white, would he be denied a writ of *habeas corpus* to determine whether or not he were a citizen. If such a construction be placed upon our law, Immigration Inspectors can be stationed at various border ports of the United States, and according to their own whims and desires may banish from the United States any of its citizens, either upon reasonable grounds or upon no reasonable or legal grounds, and there is no redress for that citizen, such a holding, we contend, borders on anarchy and is absurd.

Notwithstanding the fact that the record discloses that there was no evidence had or taken in

these cases, the inspector returns in his fourth count (p. 5): "That all the evidence produced by the said Bok Wah was submitted to the said F. W. Berkshire, and, after the same was duly considered by the officer aforesaid, it was adjudged by him, on October 13th, 1903, that the said application was an alien Chinese person, and not entitled to enter or remain in the United States."

That is a decision arbitrary in its character, based upon no evidence whatever and the result of a mere whim or caprice of the inspector, and bears no semblance to due process of law.

Under the rules adopted by the Department of Commerce and Labor relative to Chinese seeking to enter the United States above quoted, it is patent to this court that a fair, impartial, full and complete hearing of the rights of a Chinese person claiming citizenship cannot be investigated and determined by the Inspector, and, therefore, we say that they acted wisely in remaining mute when the Inspector sought to determine their rights in such an arbitrary manner as the rules quoted provide, and in seeking at least to enter a court of justice, where the evidence upon both sides may be presented in an orderly and legal manner, and none but competent evidence submitted, whether for or against the applicant, and if any error is committed, it may be reviewed in a legal manner.

The decision of the Inspector is generally based upon hearsay, incompetent and unreliable testimony, and for that reason we say that any citizen should hesitate to submit his right to be and remain in his own country to such a tribunal, and if there is a legal way to avoid leaving the final determination of that issue to such a tribunal he should seek his remedy.

POINT SIX.

A Chinese inspector is in no sense a judicial officer.

Section 1 of Article 3 of the Constitution, provides: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish."

Section 2 provides; "That judicial power shall extend to all cases, in law and equity."

It is clear from the above that an immigration officer is not, and cannot be, a judicial officer and the trial court so finds (page 72). "Neither the Commissioner nor the inspector, etc., is exercising the judicial power of the government for it is not vested in either of them, and, as said, cannot be. The Constitution, as we have seen, vests this power in the courts alone."

It must necessarily follow that if the determination of a question of citizenship presents a case in law under Section 2 of Article 3 of the Constitution, it cannot be *finally* determined except by the judicial power, namely, the Supreme Court and such inferior courts as Congress may from time to time ordain and establish.

While the learned Judge in the opinion written herein cites numerous authorities justifying the action of the immigration officer in denying applicants for admission the right to enter the United States, all of these cases are cases where the applicant was concededly an alien, with the exception of the Chin Bak Kan vs. U. S., 186 U. S., 193, and the learned Judge seeks to justify his conclusion that the decision of the inspector is *res judicata* herein under the holding

in that case, and in so doing the court likens a United States Commissioner to an immigrant officer. It seems to us that there is a marked distinction between the powers and duties of the two, as has been already pointed out. An immigration officer's powers, duties and investigations begin and end with aliens, while the commissioner, by law, is empowered with the duty of investigating and determining the right of a Chinese person within the United States to be and remain therein, which necessarily carries with it the right to investigate as to citizenship. Moreover, in the case of the commissioner, the person claiming citizenship is not denied his right to have that question determined according to a constitutional judicial power of the United States, because an appeal is allowed to him to the various courts of the United States, and the court in writing the opinion in the Chin Bak Kan recognizes that distinction and makes it clear, and says: "A United States commissioner is a *quasi* judicial officer, and in these hearings he acts judicially. *Moreover, this case was taken by appeal from the commissioner to the judge of the District Court and his decision was affirmed, so that there was an adjudication by a United States judge in the constitutional sense as well as by the commissioner acting as a judge in the sense of the statute.*"

And the court further says, "It is impossible for us to hold that it is not competent for Congress to empower a United States Commissioner to determine the various facts upon which citizenship depends," but the court has not gone to the length of saying that they would hold that Congress could empower a United States commissioner to determine *finally* the various facts upon which citizenship depends. It seems clear that the court recognizes the fact that a party aggrieved

by the adjudication of a commissioner still has the right to an adjudication of his case in the constitutional sense, when it makes use of the following language:

"Moreover, this case was taken by appeal from the commissioner to the judge of the District Court and his decision was affirmed, so that there was an adjudication by a United States Judge in the constitutional sense as well as by the commissioner acting as a judge in the sense of the statute," hence the delegation of power to a commissioner to determine citizenship is only a delegation of that power primarily, and his decision is subject to a review in the courts, hence a review by *due process of law*. In other words a trial and hearing according to due process of law. No such review is given from the inspector. If the commissioner acts without authority, or not in accordance with due process of law, the court may correct; not so in the case of an inspector, as his decision in a case where he has jurisdiction is final, and not reviewable in the courts, but it is only when the inspector acts without exclusive jurisdiction or authority in law that his decision can be reviewed in court, and as has been pointed out, the exclusive jurisdiction of the inspector is limited to aliens only, hence his decision is attacked in this proceeding and can be reviewed by *habeas corpus*. In such a case we say that we have the right to inquire by *habeas corpus* into the authority and jurisdiction of the inspector, and his authority and jurisdiction, or the authority and jurisdiction of any court to act, is always a subject of review by *habeas corpus*. Whether he acts upon sufficient evidence, if the jurisdiction and power are there, as in the case of an alien, is not subject to review by *habeas corpus*.

POINT SEVEN.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

R. M. MOORE,
W. W. CANTWELL,
Of Counsel for Relators,
15 William St.
New York City.

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